

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
19 CVS 12667

REBECCA HARPER, et al.,

Plaintiffs,

v.

REPRESENTATIVE DAVID R. LEWIS, in his
official capacity as Senior Chair of the House
Standing Committee on Redistricting, et al.,

Defendants.

2019 NOV 7 P 4:20

STATE OF N.C.

BY

ANSWER

NOW COME the Defendants, the North Carolina State Board of Elections, Damon Circosta, Stella Anderson, Kenneth Raymond, Jeff Carmon, and David C. Black ("State Defendants"), by and through undersigned counsel, and hereby answer Plaintiffs' Complaint as follows:

INTRODUCTION

1. "[T]he constitutional rights of North Carolina citizens are infringed when the General Assembly . . . draws district maps with a predominant intent to favor voters aligned with one political party at the expense of other voters." *Common Cause v. Lewis*, 18-CVS-014001, slip. op. at 6 (N.C. Sup. Ct. Sept. 3, 2019). Partisan gerrymandering "strikes at the heart of the Free Elections Clause" of North Carolina's Constitution, a provision with no federal analogue that "guarantees that all elections must be conducted freely and honestly to ascertain, fairly and truthfully, the will of the People." *Id.* at 9, 305. Partisan gerrymandering also violates the North Carolina Constitution's guarantees of equal protection and free expression, both of which provide broader protections for voting rights than their federal counterparts. *Id.* at 307-31.

RESPONSE: State Defendants admit these allegations to the extent that they state the

factual findings and legal conclusions in *Common Cause v. Lewis*, 18-CVS-014001 (N.C. Sup. Ct. Sept. 3, 2019).

2. This case concerns North Carolina's 2016 congressional map, which may be the most extreme and brazen partisan gerrymander in American history. There is no dispute that the 2016 congressional map reflects an extreme and intentional effort to maximize Republican advantage. Legislative Defendants proudly admitted it at the time. They adopted "Partisan Advantage" as an official criterion, directing that the districts be constructed to "maintain the current partisan makeup of North Carolina's congressional delegation," namely "10 Republicans and 3 Democrats." Legislative Defendants admitted that they instructed their mapmaker, Dr. Thomas Hofeller, to use partisan voting histories to rig the district lines to entrench a 10-3 Republican advantage. Defendant Representative David Lewis asserted that the map was drawn in this manner because he believes "electing Republicans is better than electing Democrats," and the only reason Legislative Defendants sought a 10-3 Republican advantage was because they "did not believe it would be possible to draw a map with 11 Republicans and 2 Democrats."

RESPONSE: State Defendants admit that "Partisan Advantage" was adopted as a redistricting criterion by the General Assembly's redistricting committees, that Legislative Defendants have represented that they instructed their mapmaker, Dr. Thomas Hofeller, to use partisan data in drawing new maps and to draw maps that would have a 10-3 Republican advantage, and that Defendant Representative David Lewis asserted that the map was drawn in this manner because he believes "electing Republicans is better than electing Democrats," and the only reason Legislative Defendants sought a 10-3 Republican advantage was because they "did not believe it would be possible to draw a map with 11 Republicans and 2 Democrats."

State Defendants lack sufficient information to admit or deny the remaining allegations of this paragraph, and the same are therefore denied.

3. With Dr. Hofeller's help, Legislative Defendants succeeded in rigging North Carolina's congressional elections. Republicans have won 10 of 13 seats in both elections under the 2016 Plan, including in the blue wave of 2018 when Democratic congressional candidates received a majority of the statewide vote after adjusting for an uncontested race. The 2016 map is impervious to "the will of the People." *Common Cause*, 18-CVS-014001, slip. op. at 9, 306.

RESPONSE: State Defendants admit that Republican candidates won 10 of 13 seats in both elections under the 2016 Plan and that likely suggests that the Plan is impervious to "the will of the People." State Defendants lack sufficient information to admit or deny the remaining allegations of this paragraph and therefore deny the remaining allegations.

4. In 2019, in a case involving the same congressional map at issue here, the U.S. Supreme Court held that partisan gerrymandering claims are not justiciable under the *federal* constitution. *See Rucho v. Common Cause*, 139 S. Ct. 2484 (2019). But in so holding, the Court made clear that the solution to partisan gerrymandering lies with the states, because "[p]rovisions in state statutes and state constitutions can provide standards and guidance for state courts to apply." *Id.* at 2507. The courts of this State have now held that the North Carolina Constitution provides precisely such standards and guidance. Just weeks ago, a three-judge panel of this Court invalidated North Carolina's state legislative maps as unlawful partisan gerrymanders in violation of North Carolina's Free Elections Clause, Equal Protection Clause, and Freedom of Speech and Assembly Clauses. *See Common Cause*, 18-CVS-014001, slip. op. at 298-331.

RESPONSE: State Defendants admit these allegations to the extent that they state the factual findings and legal conclusions in *Rucho v. Common Cause*, 139 S. Ct. 2484 (2019) and *Common Cause v. Lewis*, 18-CVS-014001 (N.C. Sup. Ct. Sept. 3, 2019).

5. As this Court explained in *Common Cause v. Lewis*, North Carolina's 2016 congressional map "arose in remarkably similar circumstances" as the state legislative maps that the Court struck down and ordered redrawn. *Id.* at 298. The 2016 congressional map should now meet the same fate as the unconstitutional and invalidated state legislative maps. The facts of this case are undisputed, and the law of North Carolina is now settled. This Court should invalidate the gerrymandered 2016 congressional map immediately and order a new, fair map for use in the 2020 elections.

RESPONSE: State Defendants admit these allegations to the extent that they state the factual findings and legal conclusions in *Common Cause v. Lewis*, 18-CVS-014001 (N.C. Sup. Ct. Sept. 3, 2019). It is further admitted that in *Common Cause v. Lewis*, this Court interpreted the North Carolina Constitution to prohibit extreme partisan gerrymandering, and that State Defendants are unable to identify differences in the circumstances surrounding the congressional districting plan challenged here and the legislative districting plans at issue in *Common Cause v. Lewis* such that would lead to a different result in this case from that reached in *Common Cause v. Lewis*. Otherwise, the allegations of this paragraph are denied.

PARTIES

A. Plaintiffs

6. Plaintiff Amy Clare Oseroff is a teacher residing in Greenville, North Carolina, within Congressional District 1. Ms. Oseroff is a registered Democrat who has consistently voted for Democratic candidates for the U.S. House of Representatives. The General Assembly packed

the most heavily Democratic areas in Pitt County and Wilson County into District 1 to create an overwhelmingly Democratic district, ensuring that nearby Districts 2 and 3 would favor Republicans. In 2018, the Democratic candidate won District 1 with almost 70% of the vote.

RESPONSE: Admitted that Plaintiff Amy Clare Oseroff is a registered Democrat who resides within Congressional District 1, that partisan data, together with evidence introduced and findings made in *Common Cause v. Rucho*, indicates that Congressional District 1 was drawn to concentrate Democratic voters while adjoining Congressional Districts 2 and 3 were drawn in a way to dilute Democratic voting strength and favor Republicans, and that the 2018 election results speak for themselves. Defendants lack sufficient information to admit the remaining allegations of this paragraph, and the same are therefore denied.

7. Plaintiff Rebecca Harper is a real estate agent residing in Cary, North Carolina, within Congressional District 2. Ms. Harper is a registered Democrat who has consistently voted for Democratic candidates for the U.S. House of Representatives. The General Assembly carefully avoided the most Democratic areas of Wake County and Wilson County and cracked the Democratic voters of Johnston County to create a district that favors Republicans. In 2018, the Republican candidate won District 2 with nearly 53% of the vote.

RESPONSE: Admitted that Plaintiff Rebecca Harper is a registered Democrat who resides within Congressional District 2, that partisan data, together with evidence introduced and findings made in *Common Cause v. Rucho*, indicates that Congressional District 1 was drawn to concentrate Democratic voters while adjoining Congressional Districts 2 and 3 were drawn in a way to dilute Democratic voting strength and to favor Republicans, and that the 2018 election results speak for themselves. Defendants lack sufficient information to admit the

remaining allegations of this paragraph, and the same are therefore denied.

8. Plaintiff Donald Rumph is an Army and Air Force combat veteran and retired registered nurse residing in Greenville, North Carolina, within Congressional District 3. Mr. Rumph is a registered Democrat who has consistently voted for Democratic candidates for the U.S. House of Representatives. District 3 is a Republican district because the General Assembly packed the most Democratic voters from Pitt County into the adjoining District 1. In 2018, the Republican candidate ran unopposed.

RESPONSE: Admitted that Plaintiff Donald Rumph is a registered Democrat who resides within Congressional District 3, that partisan data, together with evidence introduced and findings made in *Common Cause v. Rucho*, indicates that Congressional District 1 was drawn in a way to concentrate Democratic voters while adjoining Congressional Districts 2 and 3 were drawn in a way to dilute Democratic voting strength and to favor Republicans, and that in 2018, the Republican candidate ran unopposed in Congressional District 3. Defendants lack sufficient information to admit the remaining allegations of this paragraph, and the same are therefore denied.

9. Plaintiff John Balla is a digital marketing strategist residing in Raleigh, North Carolina, within District 4. Mr. Balla is a registered Democrat who has consistently voted for Democratic candidates for the U.S. House of Representatives. District 4 is a packed Democratic

district that uses a strip of southern Durham County to connect Wake County's most Democratic areas with the heavily Democratic areas in Orange County. In 2018, the Democratic candidate won District 4 with over 75% of the vote.

RESPONSE: Admitted that Plaintiff John Balla is a registered Democrat who resides within Congressional District 4, that partisan data, together with evidence introduced and findings made in *Common Cause v. Rucho*, indicates that Congressional District 4 was drawn in a way to concentrate Democratic voters in part by splitting Wake County and placing its historically Democratic precincts in District 4, and that the 2018 election results speak for themselves. Defendants lack sufficient information to admit the remaining allegations of this paragraph, and the same are therefore denied.

10. Plaintiff Richard R. Crews is a retired stock broker residing in Newland, North Carolina, within Congressional District 5. Mr. Crews is a registered Democrat who has consistently voted for Democratic candidates for the U.S. House of Representatives. District 5 cracks Democratic voters in Forsyth County, connecting them with more Republican communities in Winston-Salem rather than grouping them with neighboring Guilford County. In 2018, the Republican candidate won District 5 with over 57% of the vote.

RESPONSE: Admitted that Plaintiff Richard Crews is a registered Democrat who resides within Congressional District 5, that it combines Democratic voters in Forsyth County with more Republican communities in Winston-Salem and not with neighboring Guilford County, and that the 2018 election results speak for themselves. Defendants lack sufficient information to admit the remaining allegations of this paragraph, and the same are therefore denied.

11. Plaintiff Lily Nicole Quick is a homemaker residing in Greensboro, North Carolina, within Congressional District 6. Ms. Quick is a registered Democrat who has consistently voted for Democratic candidates for the U.S. House of Representatives. The General Assembly cracked District 6 by splitting Greensboro and Guilford County to ensure that District 6 would favor Republicans. In 2018, the Republican candidate won District 6 with just over 56% of the vote.

RESPONSE: Admitted that Plaintiff Lily Quick is a registered Democrat who resides within Congressional District 6, that partisan data, together with evidence introduced and findings made in *Common Cause v. Rucho*, indicates that Congressional District 6 was drawn in a way that split Greensboro and Guilford County to dilute Democratic voting strength and favor Republicans, and that the 2018 election results speak for themselves. Defendants lack sufficient information to admit the remaining allegations of this paragraph, and the same are therefore denied.

12. Plaintiff Gettys Cohen Jr. is a dentist residing in Smithfield, North Carolina, within Congressional District 7. Dr. Cohen is a registered Democrat who has consistently voted for Democratic candidates for the U.S. House of Representatives. The General Assembly cracked Democratic voters in District 7, in part by splitting Johnston County's Democratic voters and Bladen County's most Democratic voters. In 2018, the Republican candidate won District 7 with over 56% of the vote.

RESPONSE: Admitted that Plaintiff Gettys Cohen Jr. is a registered Democrat who resides within Congressional District 7, that partisan data, together with evidence introduced and findings made in *Common Cause v. Rucho*, indicates that Congressional District 7 was

drawn in a way that dilutes Democratic voting strength and favors Republicans in part by splitting Johnston County's and Bladen County's Democratic voters, and that the 2018 election results speak for themselves. Defendants lack sufficient information to admit the remaining allegations of this paragraph, and the same are therefore denied.

13. Plaintiff Shawn Rush is part owner of a marketing firm and a Meals on Wheels organizer residing in East Spencer, North Carolina, within Congressional District 8. Mr. Rush is a registered Democrat who has consistently voted for Democratic candidates for the U.S. House of Representatives. The General Assembly manipulated District 8 by cracking Fayetteville's Democratic voters between Districts 8 and 9. In 2018, the Republican candidate won with roughly 55% of the vote.

RESPONSE: Admitted that Plaintiff Shawn Rush is a registered Democrat who resides within Congressional District 8, that partisan data, together with evidence introduced and findings made in *Common Cause v. Rucho*, indicates that Congressional District 8 was drawn in a way that dilutes Democratic voting strength and favors Republicans in part by splitting Fayetteville's Democratic voters between Districts 8 and 9, and that the 2018 election results speak for themselves. Defendants lack sufficient information to admit the remaining allegations of this paragraph, and the same are therefore denied.

14. Plaintiff Jackson Thomas Dunn, Jr. is a retired attorney and law professor residing in Charlotte, North Carolina, within Congressional District 9. Mr. Dunn is a registered Democrat who has consistently voted for Democratic candidates for the U.S. House of Representatives. As with District 8, the General Assembly manipulated District 9 to be as favorable as possible for

Republicans, with the Republican candidate winning by two percentage points in the 2019 special election in this district.

RESPONSE: Admitted that Plaintiff Jackson Thomas Dunn, Jr. is a registered Democrat who resides within Congressional District 9, that partisan data, together with evidence introduced and findings made in *Common Cause v. Rucho*, indicates that Congressional District 9 was drawn in a way that favors Republicans, and that the 2019 special election results speak for themselves. Defendants lack sufficient information to admit the remaining allegations of this paragraph, and the same are therefore denied.

15. Plaintiff Mark S. Peters is a retired physician assistant residing in Fletcher, North Carolina, within Congressional District 10. Mr. Peters is registered as an unaffiliated voter and has consistently voted for Democratic candidates for the U.S. House of Representatives. In drawing the 2016 maps, the General Assembly cracked Asheville's Democratic voters between Districts 10 and 11 to make each district more favorable to Republican candidates. In the 2018 elections, the Republican candidate won District 10 with over 59% of the vote.

RESPONSE: Admitted that Plaintiff Mark Peters is a registered unaffiliated voter who resides within Congressional District 10, that partisan data, together with evidence introduced and findings made in *Common Cause v. Rucho*, indicates that Congressional District 10 was drawn in a way to dilute Democratic voting strength and to favor Republicans by splitting Democratic voters in Asheville between Districts 10 and 11, and that the 2018 election results speak for themselves. Defendants lack sufficient information to admit the remaining allegations of this paragraph, and the same are therefore denied.

16. Plaintiff Joseph Thomas Gates is a former Colonel in the Air Force and a retired

information technology project manager residing in Weaverville, North Carolina, within Congressional District 11. Mr. Gates is a registered unaffiliated voter who has consistently voted for Democratic candidates for the U.S. House of Representatives. As explained above, the General Assembly made District 11 as favorable as possible for Republicans by cracking Democratic voters between Districts 10 and 11. In 2018, the Republican candidate won District 11 with over 60% of the vote.

RESPONSE: Admitted that Plaintiff Joseph Thomas Gates is a registered unaffiliated voter who resides within Congressional District 11, that partisan data, together with evidence introduced and findings made in *Common Cause v. Rucho*, indicates that Congressional District 11 was drawn in a way that favors Republicans by splitting Democratic voters between Districts 10 and 11, and that the 2018 election results speak for themselves. Defendants lack sufficient information to admit the remaining allegations of this paragraph, and the same are therefore denied.

17. Plaintiff Kathleen Barnes is the owner of a small publishing company residing in Brevard, North Carolina, within Congressional District 11. Ms. Barnes is a registered Democrat who has consistently voted for Democratic candidates for the U.S. House of Representatives. As explained above, the General Assembly made District 11 as favorable as possible for Republicans by cracking Democratic voters between Districts 10 and 11. In 2018, the Republican candidate won District 11 with over 60% of the vote.

RESPONSE: Admitted that Plaintiff Kathleen Barnes is a registered Democrat who resides within Congressional District 11, that partisan data, together with evidence introduced and findings made in *Common Cause v. Rucho*, indicates that Congressional District 11 was

drawn in a way that favors Republicans by splitting Democratic voters between Districts 10 and 11, and that the 2018 election results speak for themselves. Defendants lack sufficient information to admit the remaining allegations of this paragraph, and the same are therefore denied.

18. Plaintiff Virginia Walters Brien is a sales manager residing in Charlotte, North Carolina, within Congressional District 12. Ms. Brien is a registered unaffiliated voter who has consistently voted for Democratic candidates for the U.S. House of Representatives. District 12 is a packed Democratic district. In 2018, the Democratic candidate won District 12 with over 73% of the vote.

RESPONSE: Admitted that Plaintiff Virginia Walters Brien is a registered unaffiliated voter who resides within Congressional District 12, that partisan data, together with evidence introduced and findings made in *Common Cause v. Rucho*, indicates that Congressional District 12 was drawn in a way to concentrate Democratic voters, and that the 2018 election results speak for themselves. Defendants lack sufficient information to admit the remaining allegations of this paragraph, and the same are therefore denied.

19. Plaintiff David Dwight Brown is a retired computer systems analyst residing in Greensboro, North Carolina, within Congressional District 13. Mr. Brown is a registered Democrat who has consistently voted for Democratic candidates for the U.S. House of Representatives. The General Assembly ensured that Republicans were favored in District 13 by cracking the Guilford County Democratic voters and grouping them with overwhelmingly Republican voters in nearby counties. In 2018, the Republican candidate won District 13 with over 53% of the vote.

RESPONSE: Admitted that Plaintiff David Dwight Brown is a registered Democrat who resides within Congressional District 13, that partisan data, together with evidence introduced and findings made in *Common Cause v. Rucho*, indicates that Congressional District 13 was drawn in a way that dilutes Democratic voting strength and favors Republicans by splitting Guilford County Democratic voters between Districts 6 and 13, and that the 2018 election results speak for themselves. Defendants lack sufficient information to admit the remaining allegations of this paragraph, and the same are therefore denied.

B. Defendants

20. Defendant David R. Lewis is a member of the North Carolina House of Representatives and currently serves as the Senior Chair of the House Standing Committee on Redistricting. In 2016, Representative Lewis served as Chairman of the North Carolina House Redistricting Committee for the 2016 Extra Session and Co-Chairman of the Joint Select Committee on Congressional Redistricting. Defendant Lewis is sued in his official capacity only.

RESPONSE: Admitted on information and belief.

21. Defendant Ralph E. Hise, Jr. is a member of the North Carolina Senate and currently serves as a co-Chair of the Senate Standing Committee on Redistricting. Defendant Hise is sued in his official capacity only.

RESPONSE: Admitted on information and belief.

22. Defendant Warren Daniel is a member of the North Carolina Senate and currently serves as a co-Chair of the Senate Standing Committee on Redistricting. Defendant Daniel is

sued in his official capacity only.

RESPONSE: Admitted on information and belief.

23. Defendant Paul Newton is a member of the North Carolina Senate and currently serves as a co-Chair of the Senate Standing Committee on Redistricting. Defendant Newton is sued in his official capacity only.

RESPONSE: Admitted on information and belief.

24. Defendant Timothy K. Moore is the Speaker of the North Carolina House of Representatives. Defendant Moore is sued in his official capacity only.

RESPONSE: Admitted.

25. Defendant Philip E. Berger is the President Pro Tempore of the North Carolina Senate. Defendant Berger is sued in his official capacity only.

RESPONSE: Admitted.

26. Defendant North Carolina State Board of Elections is an agency responsible for the regulation and administration of elections in North Carolina.

RESPONSE: Admitted.

27. Defendant Damon Circosta is the Chair of the North Carolina State Board of Elections. Mr. Circosta is sued in his official capacity only.

RESPONSE: Admitted.

28. Defendant Stella Anderson is the Secretary of the North Carolina State Board of Elections. Ms. Anderson is sued in her official capacity only.

RESPONSE: Admitted.

29. Defendant Ken Raymond is a member of the North Carolina State Board of Elections. Mr. Raymond is sued in his official capacity only.

RESPONSE: Admitted.

30. Defendant Jeff Carmon III is a member of the North Carolina State Board of Elections. Mr. Carmon is sued in his official capacity only.

RESPONSE: Admitted.

31. Defendant David C. Black is a member of the North Carolina State Board of Elections. Mr. Black is sued in his official capacity only.

RESPONSE: Admitted.

JURISDICTION AND VENUE

32. This Court has jurisdiction of this action pursuant to Articles 26 and 26A of Chapter 1 of the General Statutes.

RESPONSE: Admitted.

33. Under N.C. Gen. Stat. § 1-81.1, the exclusive venue for this action is the Wake County Superior Court.

RESPONSE: Admitted.

34. Under N.C. Gen. Stat. § 1-267.1, a three-judge court must be convened because this action challenges the validity of redistricting plans enacted by the General Assembly.

RESPONSE: Admitted.

FACTUAL ALLEGATIONS

A. National Republican Party Officials Target North Carolina for Partisan Gerrymandering Prior to the 2010 Elections

35. In the years leading up to the 2010 decennial census, national Republican leaders undertook a sophisticated and concerted effort to gain control of state governments in 13 critical swing states such as North Carolina. The Republican State Leadership Committee (RSLC) code-named the plan “the REDistricting Majority Project” or “REDMAP.” REDMAP’s goal was to “control[] the redistricting process in . . . states [that] would have the greatest impact on determining how both state legislative and congressional district boundaries would be drawn” after the 2010 census. The RSLC’s REDMAP website explained that fixing these district lines in favor of Republicans would “solidify conservative policymaking at the state level and maintain a Republican stronghold in the U.S. House of Representatives for the next decade.”

RESPONSE: Admitted on information and belief that national Republican leaders undertook a plan, sometimes called “the REDistricting Majority Project” or “REDMAP,” to gain control of legislatures in certain states prior to redistricting after the 2010 Census. The State Defendants admit the remaining allegations in this paragraph to the extent that they reflect information available on The Redistricting Majority Project website at <http://www.redistrictingmajorityproject.com/>.

36. North Carolina was a key REDMAP “target state.” REDMAP aimed to flip both chambers of the North Carolina General Assembly from Democratic to Republican control.

RESPONSE: Admitted on information and belief.

37. To spearhead its efforts in North Carolina, the RSLC enlisted the most influential conservative donor in North Carolina, Art Pope. Together, the RSLC and Pope targeted 22 races in the North Carolina House and Senate. Pope helped create a new non-profit organization called “Real Jobs NC” to finance spending on the races, and the RSLC donated \$1.25 million to this new group. Pope himself made significant contributions; in total, Pope, his family, and groups backed by him spent \$2.2 million on the 22 targeted races. This represented three-quarters of the total spending by all independent groups in North Carolina on the 2010 state legislative races.

RESPONSE: State Defendants lack sufficient information and knowledge about the substance of these allegations and therefore deny them.

38. The money was well spent. Republicans won 18 of the 22 races the RSLC targeted, giving Republicans control of both the House and Senate for the first time since 1870.

RESPONSE: State Defendants admit that Republicans gained control of both the House and Senate for the first time since 1870. State Defendants lack sufficient information and knowledge to admit the remaining allegations and therefore deny them.

B. Republican Mapmakers Create the 2011 Plan from Party Headquarters With the Intent to Advantage Republicans and Disadvantage Democrats

39. Following the 2010 election, the House and Senate each established redistricting committees that were jointly responsible for preparing a congressional redistricting plan.

Representative David Lewis, in his capacity as the Senior Chair of the House Redistricting Committee, and Senator Robert Rucho, in his capacity as Senior Chair of the Senate Redistricting Committee, were responsible for developing the proposed congressional districting plan (the “2011 Plan”).

RESPONSE: Admitted on information and belief.

40. The House and Senate Redistricting Committees engaged Dr. Thomas Hofeller, who also served on a REDMAP redistricting team, to draw the 2011 Plan. Dr. Hofeller and his team drew the 2011 Plan at the North Carolina Republican Party headquarters in Raleigh using mapmaking software licensed by the North Carolina Republican Party.

RESPONSE: Admitted on information on belief that the House and Senate redistricting committees engaged Dr. Thomas Hofeller, who was involved in REDMAP, to draw the 2011 Congressional Plan. The State Defendants lack sufficient information and belief to admit or deny the remaining allegations of this paragraph, and the same are therefore denied.

41. Legislative Defendants did not make Dr. Hofeller available to Democratic members of the General Assembly during the 2011 redistricting process, nor did Dr. Hofeller communicate with any Democratic members in developing the 2011 Plan.

RESPONSE: Admitted on information and belief.

42. Representative Lewis and Senator Rucho, both Republicans, orally instructed Dr. Hofeller regarding the criteria he should follow in drawing the new plan. Dr. Hofeller

later testified that the Committee Chairs instructed him to “create as many districts as possible in which GOP candidates would be able to successfully compete for office.” Deposition of Thomas Hofeller (“Hofeller Dep.”) at 123:8-23 (Jan. 24, 2017). Following these instructions, Dr. Hofeller sought to “minimize the number of districts in which Democrats would have an opportunity to elect a Democratic candidate.” Hofeller Dep. at 123:1-7. Dr. Hofeller consulted “political voting history” as reflected in “past election results,” which he testified is “the most important information in trying to give one party or the other a partisan advantage in the redistricting process,” because it is “the best predictor of how a particular geographic area is likely to vote” in future elections. Hofeller Dep. at 14:7-15:14, 16:8-12, 132:14-134:13.

RESPONSE: Admitted on information and belief.

43. Dr. Hofeller sought to minimize the opportunities for Democratic voters to elect Democratic representatives by using past election data to concentrate as many Democratic voters as possible into Congressional Districts 1, 4, and 12. See Hofeller Dep. at 127:19-128:6. In his testimony, Dr. Hofeller admitted that the resulting 2011 Plan “diminished the opportunity to elect a Democratic candidate in the districts in which [he] increased Republican voting strength.” See Hofeller Dep. at 128:17-21.

RESPONSE: State Defendants admit that the allegations in this paragraph to the extent that they reflect the testimony cited.

44. The scheme worked. North Carolina conducted two congressional elections using the 2011 Plan, both of which handed outsized power to Republican congressional candidates. In 2012, Republicans won a *minority* of the statewide congressional vote but won 9 of the 13 seats.

Year	North Carolina State-Wide Votes in U.S. House Elections		Representatives Elected to U.S. House for North Carolina	
	Percentage of <i>Votes</i> Received by Democratic Congressional Candidates	Percentage of <i>Votes</i> Received by Republican Congressional Candidates	Percentage of <i>Seats</i> Won by Democratic Congressional Candidates	Percentage of <i>Seats</i> Won by Republican Congressional Candidates
2012	51%	49%	31% (4 of 13)	69% (9 of 13)
2014	46%	54%	23% (3 of 13)	77% (10 of 13)

RESPONSE: Admitted that in 2012, Democratic congressional candidates received approximately 51% of the total votes cast, while Republican congressional candidates received approximately 49% of the total votes cast, and that in 2014, Democratic congressional candidates received approximately 46% of the total votes cast, while Republican congressional candidates received approximately 54% of the total votes cast. It is further admitted that in 2012, Democratic congressional candidates won 4 of North Carolina's 13 congressional seats while Republican candidates won 9, and that in 2014, Democratic congressional candidates won 3 of North Carolina's 13 congressional seats, while Republican candidates won 10. The State Defendants lack sufficient information to admit or deny the remaining allegations of this paragraph, and the same are therefore denied.

C. Legislative Defendants Create the 2016 Plan with the Explicit Partisan Goal of Guaranteeing a 10-3 Republican Advantage in Congressional Seats

45. On February 5, 2016, a three-judge federal district court struck down the 2011 Plan as racially gerrymandered in violation of the Fourteenth Amendment's Equal Protection Clause. *See Harris v. McCrory*, 159 F. Supp. 3d 600 (M.D.N.C. 2016). The Court ordered the General Assembly to draw a new congressional map.

RESPONSE: Admitted.

46. At that time, Republicans held supermajority control of both chambers of the North Carolina General Assembly, and thus had the power to draw the new congressional district lines unilaterally. Representative Lewis and Senator Rucho again took charge of the mapmaking process, and again engaged Dr. Hofeller to draw the remedial congressional plan.

RESPONSE: State Defendants admit that at the time, Republicans held supermajority control of both chambers of the North Carolina General Assembly and had the power to draw the new congressional district lines without Democratic support. It is further admitted, on information and belief, that Representative Lewis and Senator Rucho led the redistricting process in the legislature in 2016 and engaged Dr. Hofeller to draw the remedial congressional plan. The State Defendants lack sufficient information to admit or deny the remaining allegations of this paragraph, and the same are therefore denied.

47. On February 9, 2016, in a meeting at Dr. Hofeller's home, Representative Lewis and Senator Rucho gave Dr. Hofeller oral instructions regarding the criteria he should use in drawing the remedial plan, directing him to use political data to create the new districts. This political data included precinct-level election results from all statewide elections, excluding presidential elections, dating back to January 1, 2008. Representative Lewis and Senator Rucho specifically instructed Dr. Hofeller to use this partisanship data to draw a map that would ensure 10 Republican seats and 3 Democratic seats. *See* Deposition of Representative David Lewis ("Lewis Dep.") at 162:24-163:7, 166:13-169:1 (Jan. 26, 2017); Hofeller Dep. at 175:19-23, 178:14-20, 188:19-190:2.

RESPONSE: State Defendants admit that the allegations in this paragraph to the extent that they reflect the testimony cited.

48. Working on his personal computer, Dr. Hofeller sought to achieve Representative Lewis and Senator Rucho's partisan objectives through the use of a partisanship formula he created to score every voting tabulation district (VTD) in North Carolina. Dr. Hofeller's partisanship formula measured the average Democratic and Republican vote share in each VTD across the following seven statewide elections: the 2008 Gubernatorial, U.S. Senate, and Commissioner of Insurance elections; the 2010 U.S. Senate election; the 2012 Gubernatorial and Commissioner of Labor elections; and the 2014 U.S. Senate election.

RESPONSE: Admitted on information and belief.

49. Dr. Hofeller testified that he used the averaged results from these seven elections "to get a pretty good cross section of what the past vote had been," Hofeller Dep. at 212:16-213:9, and "[t]o give [him] an indication of the two-party partisan characteristics of VTDs," Deposition of Thomas Hofeller ("Hofeller Dep. II") at 267:5-6 (Feb. 10, 2017). Dr. Hofeller said that "he had drawn numerous plans in the state of North Carolina over decades," and that in his experience, "the underlying political nature of the precincts in the state does not change no matter what race you use to analyze it." Trial Testimony of Thomas Hofeller ("Hofeller Testimony") at 525:6-10, *Common Cause v. Rucho*, No. 1:13-cv-949, 2018 WL 421334 (M.D.N.C. Sept. 4, 2018), *vacated by Rucho v. Common Cause*, 139 S. Ct. 2484 (2019); *see* Hofeller Dep. at 149:5-18. "So once a precinct is found to be a strong Democratic precinct," Dr. Hofeller explained, "it's probably going to act as a strong Democratic precinct in every subsequent election. The same would be true for Republican precincts." Hofeller Testimony at 525:14-17.

RESPONSE: State Defendants admit that the allegations in this paragraph to the extent that they reflect the testimony cited.

50. As he drew the district lines in the Maptitude software program, Dr. Hofeller color-coded VTDs on his screen based on his partisanship formula. Dr. Hofeller admitted that he used this partisan color-coding to guide him in assigning VTDs “to one congressional district or another,” using red to show VTDs where voter history data was “the most Democratic” and dark blue for areas that were “the most Republican.” Hofeller Dep. at 102:14-104:22, 106:23-107:1. He further admitted that he similarly used his partisanship formula to assess the partisan performance of draft plans as a whole. Hofeller Dep. II at 282:1-7.

RESPONSE: State Defendants admit that the allegations in this paragraph to the extent that they reflect the testimony cited.

51. Dr. Hofeller testified that he conveyed to Representative Lewis his assessment of the partisan performance of districts for which the partisan result wasn’t “really obvious.” Hofeller Dep. II at 290:17-25. Representative Lewis admitted in sworn testimony that “[n]early every time” he reviewed Dr. Hofeller’s draft plans, Representative Lewis assessed the plans’ partisan performance using the results from North Carolina’s 2014 Senate race between Senator Thom Tillis and former Senator Kay Hagan, because it was “in [his] mind the closest political race with equally matched candidates who spent about the same amount of money.” Lewis Dep. at 63:9-64:17.

RESPONSE: State Defendants admit that the allegations in this paragraph to the extent that they reflect the testimony cited.

52. Both Representative Lewis and Dr. Hofeller admitted that Dr. Hofeller had nearly finished drawing the final 2016 Plan before the House and Senate Redistricting Committees ever

met, and that Dr. Hofeller pre-drew the plan with express partisan intent. Dr. Hofeller recalled that “the plan was actually brought into a form to be presented to the legislature long before [February] 16th.” Hofeller Dep. at 175:10-18. Indeed, on February 10, 2016, Dr. Hofeller met with Representative Lewis and Senator Rucho and showed them several draft plans. Lewis Dep. at 58:13-61:17. Representative Lewis visited Dr. Hofeller’s house several more times over the next few days to review additional draft plans. *Id.* at 73:7-74:7, 77:7-20.

RESPONSE: State Defendants admit that the allegations in this paragraph to the extent that they reflect the testimony cited.

53. The maps Representative Lewis reviewed with Dr. Hofeller over the three days following the February 10 meeting were “near-final versions of the 2016 map” that Representative Lewis intended to submit to the legislature for approval. Lewis Dep. at 77:7-20. Dr. Hofeller and Representative Lewis agreed on a draft plan on either February 12 or 13, 2016. *Id.* That plan was “ultimately adopted with a minor distinction for an incumbency issue.” *Id.* at 77:21-24.

RESPONSE: State Defendants admit that the allegations in this paragraph to the extent that they reflect the testimony cited.

54. On February 12, 2016, after the 2016 Plan was already nearly finished, the Republican leadership of the General Assembly appointed Representative Lewis and Senator Rucho as co-chairs of the newly formed Joint Select Committee on Redistricting (the “Joint Committee”). The Joint Committee consisted of 25 Republicans and 12 Democrats.

RESPONSE: State Defendants admit, on information and belief, that in February

2016, the Republican leadership appointed Representative Lewis and Senator Rucho as co-chairs of the newly formed Joint Select Committee on Redistricting after the 2016 Plan was largely completed and that the Joint Committee consisted of 25 Republicans and 12 Democrats.

55. The Joint Committee held a public hearing on February 15, 2016. But because Dr. Hofeller finished drawing the 2016 Plan before the hearing took place, the final plan did not reflect any public input.

RESPONSE: On information and belief, State Defendants admit that the Joint Committee held a public hearing on February 15, 2016, after the 2016 Plan had largely been completed. State Defendants lack sufficient information to admit the remaining allegations and therefore deny the same.

56. At a meeting on February 16, 2016, the Joint Committee adopted a set of criteria (the “2016 Adopted Criteria”) to govern the creation of the 2016 Plan.

RESPONSE: Admitted on information and belief.

57. The Joint Committee adopted “Partisan Advantage” as one official criterion. This criterion required the new plan to preserve Republicans’ existing 10-3 advantage in North Carolina’s congressional delegation. The criterion read as follows:

Partisan Advantage: The partisan makeup of the congressional delegation under the enacted plan is 10 Republicans and 3 Democrats. The Committee shall make reasonable efforts to construct districts in the 2016 Contingent Congressional Plan to maintain the current partisan makeup of North Carolina’s congressional delegation.

RESPONSE: State Defendants admit the allegations in this paragraph to the extent

that they reflect the adopted criteria.

58. In explaining this Partisan Advantage criterion, Representative Lewis proposed that the Committee “draw the maps to give a partisan advantage to 10 Republicans and 3 Democrats because I do not believe it’s possible to draw a map with 11 Republicans and 2 Democrats.” Joint Comm. Session, Feb. 16, 2016, at 50:6-10.

RESPONSE: State Defendants admit that the allegations in this paragraph to the extent that they reflect the transcript cited.

59. Representative Lewis “acknowledge[d] freely that this would be a political gerrymander.” *Id.* at 48:4-5.

RESPONSE: State Defendants admit that the allegations in this paragraph to the extent that they reflect the transcript cited.

60. The Joint Committee adopted “Political Data” as another criterion, which stated:

Political Data: The only data other than population data to be used to construct congressional districts shall be election results in statewide contests since January 1, 2008, not including the last two presidential contests. Data identifying the race of individuals or voters shall not be used in the construction or consideration of districts in the 2016 Contingent Congressional Plan. Voting districts (“VTDs”) should be split only when necessary to comply with the zero deviation population requirements set forth above in order to ensure the integrity of political data.

RESPONSE: State Defendants admit that the allegations in this paragraph to the extent that they reflect the criteria cited.

61. Representative Lewis left no doubt as to how this political data would be used,

telling the Joint Committee members he “want[ed] to make clear that to the extent [we] are going to use political data in drawing this map, it is to gain partisan advantage on the map. I want that criteria to be clearly stated and understood.” Joint Comm. Session, Feb. 16, 2016, at 53:24-54:4.

RESPONSE: State Defendants admit that the allegations in this paragraph to the extent that they reflect the transcript cited.

62. The remaining criteria adopted by the Joint Committee were to provide for equal population, to make the districts contiguous, to eliminate the then-current configuration of District 12, to improve the compactness of the existing districts, to keep more counties and VTDs whole than the existing districts, and to avoid pairing incumbents.

RESPONSE: State Defendants admit that the allegations in this paragraph to the extent that they reflect the criteria cited.

63. The Joint Committee adopted the Political Data and Partisan Advantage criteria on a party-line vote. The other criteria were passed on a bipartisan basis. Representative Lewis reassured the Committee that “the criteria that will be available to the mapmaker . . . will only be the criteria that this . . . committee has adopted,” *id.* at 140:8-13, despite knowing that the 2016 Plan was “for the most part finished by the time the criteria were formally adopted by the committee,” Hofeller Dep. at 177:9-14. He later emphasized that “the criteria that this committee debated and adopted . . . are the criteria that *were used to draw these maps.*” Joint Comm. Session, Feb. 17, 2016, at 43:4-14 (emphasis added).

RESPONSE: State Defendants admit on information and belief that the Joint Committee adopted the Political Data and Partisan Advantage criteria on a party-line vote while the other

criteria were passed on a bipartisan basis. State Defendants further admit that the allegations in this paragraph to the extent that they reflect the transcript cited State Defendants lack sufficient information to admit the remaining allegations and therefore deny the same.

64. The Joint Committee authorized Representative Lewis and Senator Rucho to engage a consultant to assist the Committee's Republican leadership in drawing the remedial plan. Representative Lewis and Senator Rucho immediately sent Dr. Hofeller an engagement letter, which he signed the same day. Dr. Hofeller then downloaded the 2016 Plan, which he had completed several days earlier, onto a state legislative computer.

RESPONSE: Admitted, on information and belief, that Representative Lewis and Senator Rucho received authorization to hire a redistricting consulting to assist the Joint Committee in drawing the remedial plan, and that pursuant to that authorization, Representative Lewis and Senator Rucho sent Dr. Hofeller an engagement letter on February 16, 2016, which Dr. Hofeller signed that same day. It is further admitted that, upon his formal engagement, Dr. Hofeller downloaded the 2016 Plan, which he had completed several days earlier, from his personal computer onto a legislative computer. State Defendants lack sufficient information to admit the remaining allegations and therefore deny the same.

65. Democratic members of the Joint Committee were not allowed to consult with Dr. Hofeller, nor were they allowed access to the state legislative computer on which he downloaded the 2016 Plan.

RESPONSE: Admitted on information and belief.

66. Dr. Hofeller later testified that the 2016 Plan followed the Committee's Partisan Advantage and Political Data criteria. *See* Hofeller Dep. at 129:14-15.

RESPONSE: State Defendants admit that the allegations in this paragraph to the extent that they reflect the testimony cited.

67. On February 17, 2016, just one day after the Joint Committee adopted the official criteria, Representative Lewis and Senator Rucho presented the 2016 Plan to the Committee. *See* Joint Comm. Session, Feb. 17, 2016, at 11:8-15. During the presentation, Representative Lewis discussed the partisan performance of the proposed districts and asserted that the 2016 Plan would "produce an opportunity to elect ten Republicans members of Congress." *Id.* at 12:3-7. To prove it, Representative Lewis provided Committee members with spreadsheets showing the partisan performance of the proposed districts in twenty previous statewide elections. *E.g., id.* at 17:4-18:23. The Committee then approved the 2016 Plan on a party-line vote.

RESPONSE: State Defendants admit, on information and belief, that Representative Lewis and Senator Rucho presented the 2016 Plan to the Committee on February 17, 2016, a day after the Joint Committee adopted the criteria, and that the Committee approved the plan on a party-line vote. State Defendants further admit the allegations in this paragraph to the extent that they reflect the transcript cited.

68. On February 19, 2016, the North Carolina House of Representatives debated the 2016 Plan. During the debate, Representative Lewis "freely acknowledge[d] that [he] sought partisan advantage." N.C. House Floor Session, Feb. 19, 2016, at 31:14-17. He defended the Partisan Advantage criterion by stating: "I think electing Republicans is better than electing

Democrats. So I drew this map in a way to help foster what I think is better for the country.” *Id.* at 34:21-23.

RESPONSE: State Defendants admit on information and belief that the 2016 was debated during the house floor session on February 19, 2016. State Defendants further admit the allegations in this paragraph to the extent that they reflect the transcript cited.

69. The North Carolina House and Senate approved the 2016 Plan on February 18 and February 19, 2016, respectively. No Democrat in either chamber voted for the 2016 Plan.

RESPONSE: Admitted.

70. In sworn testimony, Senator Rucho confirmed that the 2016 Plan “satisfied” “all criteria,” including the criteria requiring a 10-3 partisan advantage for Republicans. Deposition of Senator Robert A. Rucho (“Rucho Dep.”) 193:24-194:14 (Jan. 25, 2017).

RESPONSE: State Defendants admit the allegations in this paragraph to the extent that they reflect the testimony cited.

D. The 2016 Plan Achieves Its Intended Effect of Propelling Ten Republican Congressional Candidates to Electoral Victory Every Two Years

71. The 2016 Plan has achieved precisely its intended partisan effects—a guaranteed 10-3 Republican advantage in North Carolina’s congressional delegation.

RESPONSE: State Defendants admit, on information and belief, that the 2016 plan provides a partisan advantage to Republicans, and that in the two elections conducted since the Plan’s adoption, Republicans have won 10 of the districts while Democrats have won 3. As to remaining allegations, State Defendants lack sufficient information to admit them and

therefore the same are denied.

72. In the 2016 elections, Democratic congressional candidates in North Carolina won a combined 47% of the statewide vote, and yet won only 3 of 13 seats (23%).

RESPONSE: Admitted.

73. The results are even more striking in 2018. Despite the blue wave that year, and despite the fact the two-party statewide vote was essentially a tie, Democrats were unable to flip a single seat. In fact, adjusting for a district that a Republican won in an uncontested race in 2018, Democrats won a *majority* of the statewide vote in the 2018 congressional elections, but still won only 3 of the state's 13 congressional seats.

RESPONSE: Admitted on information and belief that Democrats were unable to flip a seat in 2018, that the two-party statewide vote was close to a tie, and that after adjusting for an uncontested race by using the results of that district's race in a September 2019 special election, Democrats won a majority of the statewide vote in the 2018 congressional elections, but still won only 3 of the state's 13 congressional seats. State Defendants lack sufficient information to admit the remaining allegations and therefore deny the same.

74. The results of the individual races in 2018 reveal how Legislative Defendants achieved this remarkable feat. The following table shows each party's share of the two-party vote in the districts that the party won in 2018:¹

¹ For District 9, this table uses the results of the September 2019 special elections. To adjust for the uncontested race in District 3, this table assigns the Democratic and Republican candidates

District	Democratic Vote Share	Republican Vote Share
1	69.9%	
4	75.1%	
12	73.1%	
2		52.8%
3		100.0%
5		57.0%
6		56.5%
7		56.5%
8		55.3%
9		51.0%
10		59.3%
11		60.4%
13		53.1%
Statewide Vote Share Before Adjusting for Uncontested Race	48.9%	51.1%
Statewide Vote Share After Adjusting for Uncontested Race	50.9%	49.1%
Percentage of Seats Won	23.1%	76.9%

RESPONSE: State Defendants admit the allegations in this paragraph to the extent that they reflect the election results in 2018 and 2019. State Defendants lack sufficient information to admit the remaining allegations and therefore deny the same.

75. This table demonstrates the 2016 Plan's packing and cracking in action. In the three seats that Democrats won, the Democratic candidate won enormously lopsided victories, earning between 69.9% and 75.1% of the vote in each of these districts. In contrast, victorious Republican candidates won their seats by much smaller margins, winning between 51.0% and 60.4% of the vote in all contested districts. The 2016 Plan thus guaranteed that Democrats

the share of the two-party vote received by each candidate in the special election held in District 3 in September 2019.

would win three seats by very large margins, while Republicans would win the lion's share of seats by much smaller, although still comfortable, margins.

RESPONSE: State Defendants admit that in 2018, successful Democratic congressional candidates won their districts by higher margins than successful Republican congressional candidates. State Defendants further admit the allegations in this paragraph to the extent that they reflect election results in 2018. State Defendants lack sufficient information to admit the remaining allegations and therefore deny the same.

76. Extensive expert analysis conducted for purposes of the federal partisan gerrymandering challenge to the 2016 Plan confirms that the 2016 Plan is an intentional, extreme partisan gerrymander that dilutes Democratic votes and prevents Democratic voters from electing candidates of their choice. Dr. Jowei Chen, a professor of political science at the University of Michigan, generated 3,000 nonpartisan simulated maps respecting North Carolina's political geography and traditional redistricting principles including equal population, contiguity and compactness, and avoiding splitting counties and VTDs. Dr. Chen concluded that the 2016 Plan was extraordinarily anomalous and heavily gerrymandered, and that the gerrymander caused a three to five seat shift in favor of the Republican Party. Dr. Jonathan Mattingly, the chairman of the Duke Mathematics Department, generated over 24,000 nonpartisan simulated maps respecting North Carolina's political geography and traditional redistricting principles including equal population, contiguity and compactness, and avoiding splitting counties and VTDs. Dr. Mattingly likewise concluded that the 2016 Plan was extraordinarily anomalous and heavily gerrymandered, and that the gerrymander caused as many as three seats to shift in favor of the Republican Party.

RESPONSE: State Defendants admit that the expert testimony and reports as presented

in *Rucho* speak for themselves, and that, based on the evidence and findings in *Rucho*, the 2016 Plan was an intentional partisan gerrymander and that it diluted Democratic voting strength. State Defendants lack sufficient information to admit the remaining allegations and therefore deny the same.

E. The 2016 Plan Packs and Cracks Democratic Voters in Every District

77. The 2016 Plan meticulously packs and cracks Democratic voters in each and every district—without exception. The sections below describe some of the most egregious examples of cracking and packing in each district.

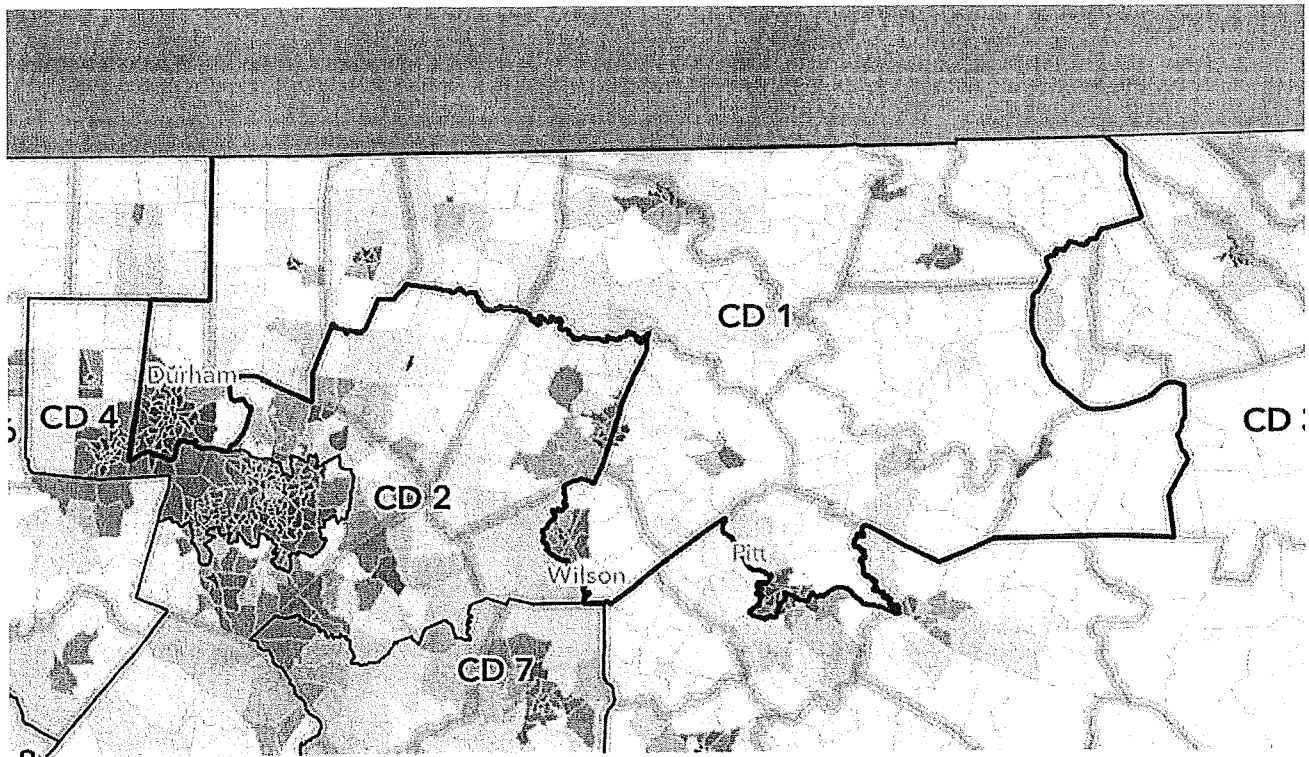
RESPONSE: State Defendants admit that the 2016 Plan concentrates Democratic voters in 3 of the 13 congressional districts and disperses Democratic voters in most of the remaining districts so that Republicans are favored in those districts. State Defendants lack sufficient information to admit the remaining allegations and therefore deny the same.

Congressional District 1

78. District 1 is a packed Democratic district that stitches together the heavily Democratic areas of Durham, Wilson, and Pitt Counties with a handful of rural Democratic counties in the northeastern portion of the State.

RESPONSE: Admitted that partisan data, together with evidence introduced and findings made in *Common Cause v. Rucho*, indicates that Democratic voters are concentrated in District 1, which combines areas of Durham, Wilson, and Pitt counties with other rural counties in the northeastern portion of the State. State Defendants lack sufficient information to admit the remaining allegations and therefore deny the same.

79. The following image (and others below) shows the district's boundaries and the partisanship of its VTDs using the results of the 2016 North Carolina Attorney General race, with darker blue shading for the VTDs that voted more heavily Democratic, darker red for VTDs that voted more heavily Republican, and lighter shading for VTDs that were closer to a tie:



RESPONSE: State Defendants admit that the 2016 Plan speaks for itself. State Defendants lack sufficient information to admit the allegations of Paragraph 79 and therefore deny the same.

80. The 2016 Plan divides Pitt County for partisan ends, placing Pitt County's most Democratic VTDs in District 1 to the north, while putting the county's more moderate and Republican VTDs in District 3 to the south.

RESPONSE: Admitted that partisan data, together with evidence introduced and

findings made in *Common Cause v. Rucho*, indicates that the 2016 Plan divides Pitt County for partisan ends by splitting Pitt County such that heavily Democratic areas were placed in District 1 and heavily Republican areas were placed in District 3. State Defendants lack sufficient information to admit the remaining allegations and therefore deny the same.

81. The 2016 Plan does the same in Wilson County. In dividing Wilson County, the plan builds a fence between Democratic and Republican voters, nearly straight down the middle of the county, putting the Democratic VTDs in District 1 to the east and the Republican VTDs in District 2 to the west.

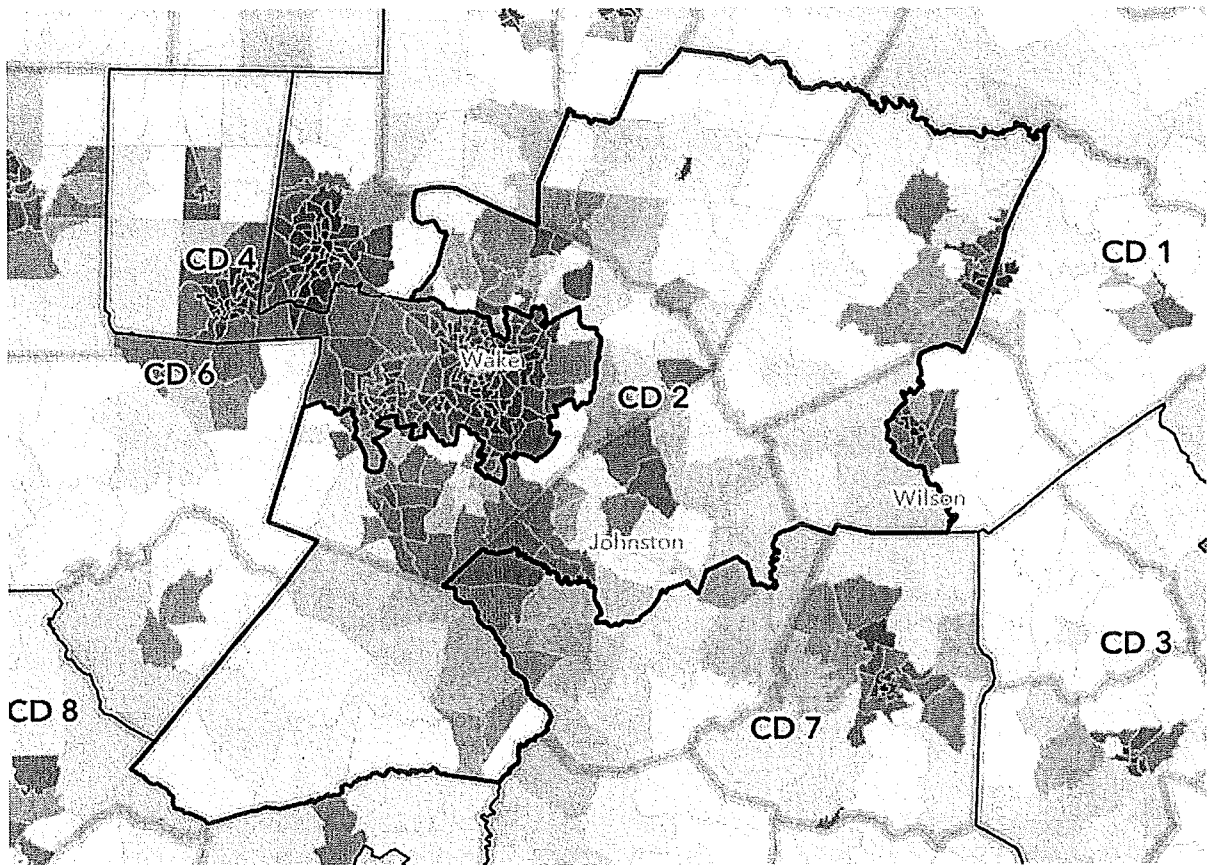
RESPONSE: Admitted that partisan data, together with evidence introduced and findings made in *Common Cause v. Rucho*, indicates that the 2016 Plan divides Wilson County for partisan ends by splitting Wilson County such that historically Democratic areas were placed in District 1 and historically Republican areas were placed in District 2. State Defendants lack sufficient information to admit the remaining allegations and therefore deny the same.

82. The 2016 Plan's packing of Democratic voters in District 1 has produced an overwhelmingly Democratic district. In 2016 and 2018, the Democratic candidate won District 1 with 70.3% and 69.9% of the vote, respectively.

RESPONSE: Admitted that partisan data, together with evidence introduced and findings made in *Common Cause v. Rucho*, indicates that the 2016 Plan concentrates Democratic voters in District 1. State Defendants further admit the allegations in this paragraph to the extent that they reflect the results of the 2016 and 2018 elections. State Defendants lack sufficient information to admit the remaining allegations and therefore deny the same.

Congressional District 2

83. District 2 cracks Democratic voters. It carefully avoids the most Democratic areas of Wake County (to the west) and Wilson County (to the east), instead picking up only those counties' moderate and Republican-leaning VTDs. The map further cracks the Democratic voters of Johnston County, splitting them between District 2 to the north and District 7 to the south. The following image shows this extreme cracking of Democratic voters:



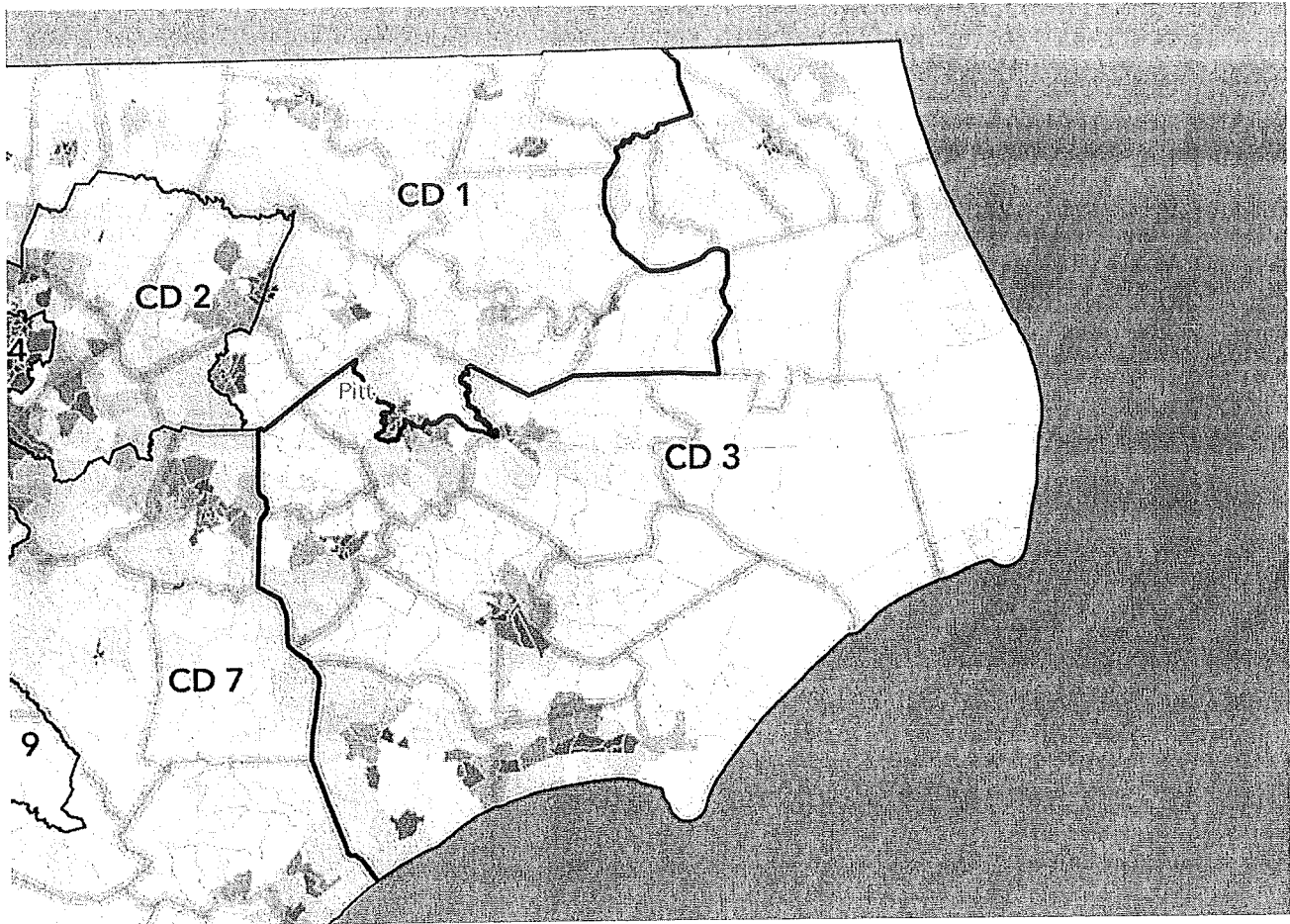
RESPONSE: Admitted that partisan data, together with evidence introduced and findings made in *Common Cause v. Rucho*, indicates that the 2016 Plan dilutes Democratic voting strength in District 2 by incorporating the Republican suburbs of Raleigh while excluded the Democratic parts of that city, and by splitting Wilson County such that historically Democratic precincts were placed in District 1 and historically Republican precincts were placed in District 2. It is further admitted that District 2 splits Johnston County. State Defendants lack sufficient information to admit the remaining allegations and therefore deny the same.

84. Legislative Defendants' extreme gerrymandering of this district has ensured that it remains a Republican seat. The Republican candidate won District 2 with 56.7% and 52.8% of the vote in 2016 and 2018, respectively.

RESPONSE: Admitted that partisan data, together with evidence introduced and findings made in *Common Cause v. Rucho*, indicates that District 2 was drawn to favor Republicans. State Defendants further admit the allegations in this paragraph to the extent that they reflect the results of the 2016 and 2018 elections. State Defendants lack sufficient information to admit the remaining allegations and therefore deny the same.

Congressional District 3

85. Legislative Defendants likewise engineered District 3 to be a safe Republican seat. Whereas District 1 was the recipient of all of Pitt County's most Democratic VTDs, District 3 contains all of Pitt County's most Republican VTDs. The district further avoids a handful of moderate and Democratic counties in eastern North Carolina.



RESPONSE: Admitted that partisan data, together with evidence introduced and findings made in *Common Cause v. Rucho*, indicates that District 3 was drawn to dilute Democratic voting strength and favor Republicans in future elections in part by placing Pitt County's disproportionately Democratic precincts into District 1, while placing its disproportionately Republican precincts into District 3. State Defendants lack sufficient information to admit the remaining allegations and therefore deny the same.

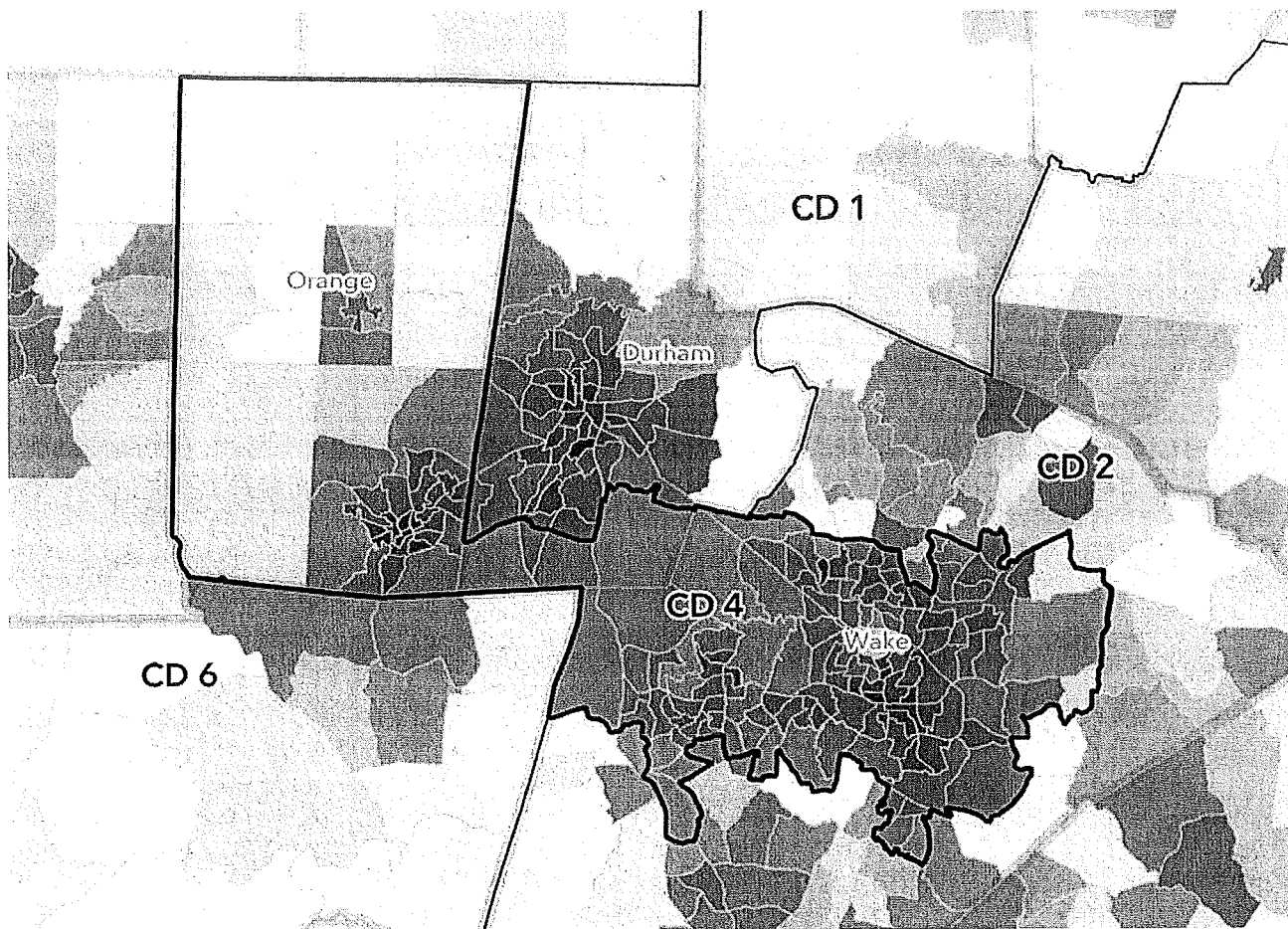
86. District 3 has performed as designed. The Republican candidate won uncontested in 2018, and won 67.2% of the vote in 2016.

RESPONSE: Admitted that partisan data, together with evidence introduced and

findings made in *Common Cause v. Rucho*, indicates that District 3 was designed to and has favored Republicans, and that the Republican candidate in that district won uncontested in 2018. State Defendants further admit the allegations in this paragraph to the extent that they reflect the results of the 2016 and 2018 elections. State Defendants lack sufficient information to admit the remaining allegations and therefore deny the same.

Congressional District 4

87. District 4 is a clear example of the subordination of traditional districting principles to partisan ends. Dr. Hofeller admitted in sworn testimony that he intentionally drew District 4 to be “predominantly Democratic.” Hofeller Dep. at 192:7-16. To achieve maximum packing of Democratic voters, Legislative Defendants connected Wake County’s most Democratic VTDs with the extremely Democratic VTDs in southern Durham County as well as the entirety of Democratic-leaning Orange County. This allowed Wake County’s more Republican VTDs to be put into District 2 to ensure a Republican seat.



RESPONSE: Admitted that partisan data, together with evidence introduced and findings made in *Common Cause v. Rucho*, indicates that District 4 concentrates Democratic voters in an amount greater than would otherwise ever naturally occur under neutral districting criteria, and that the 2016 Plan splits Wake County by placing its historically Democratic precincts in District 4 and placing its historically Republican precincts in District 2, which favors Republicans in District 2. State Defendants further admit the allegations in this paragraph to the extent that they reflect the testimony cited. State Defendants lack sufficient information to admit the remaining allegations and therefore deny the same.

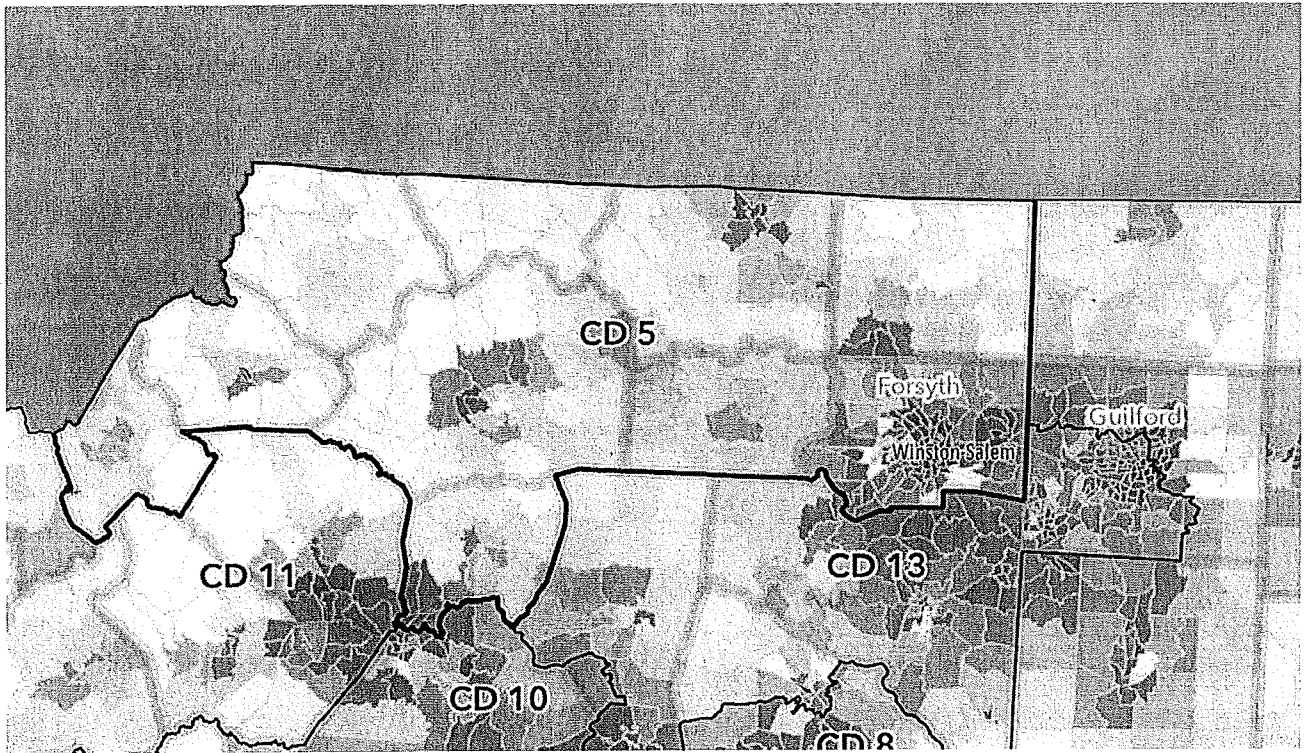
88. The result of this packing is that the Democratic candidate has won District 4

by lopsided margins, winning 68.2% and 75.1% of the vote in 2016 and 2018, respectively.

RESPONSE: Admitted that partly as a result of the concentration of Democratic voters in District 4, the Democratic candidate won District 4 in 2016 and 2018 by the margins cited. State Defendants lack sufficient information to admit the remaining allegations and therefore deny the same.

Congressional District 5

89. Legislative Defendants constructed District 5 to minimize the voting power of Democratic voters in Forsyth County. The 2016 Plan connects Winston-Salem's predominantly Democratic voters with far-flung rural communities to the west.



RESPONSE: Admitted that the 2016 Plan connects Winston-Salem's predominantly Democratic voters with rural communities to the west. State Defendants lack sufficient

information to admit the remaining allegations and therefore deny the same.

90. Legislative Defendants succeeded in wasting the votes of the Democratic voters of Forsyth County. District 5 elected a Republican by comfortable margins in the 2016 and 2018 elections, with 58.4% and 57.3% of the vote, respectively.

RESPONSE: State Defendants admit the allegations in this paragraph to the extent that they reflect the results of the 2016 and 2018 elections. State Defendants lack sufficient information to admit the remaining allegations and therefore deny the same.

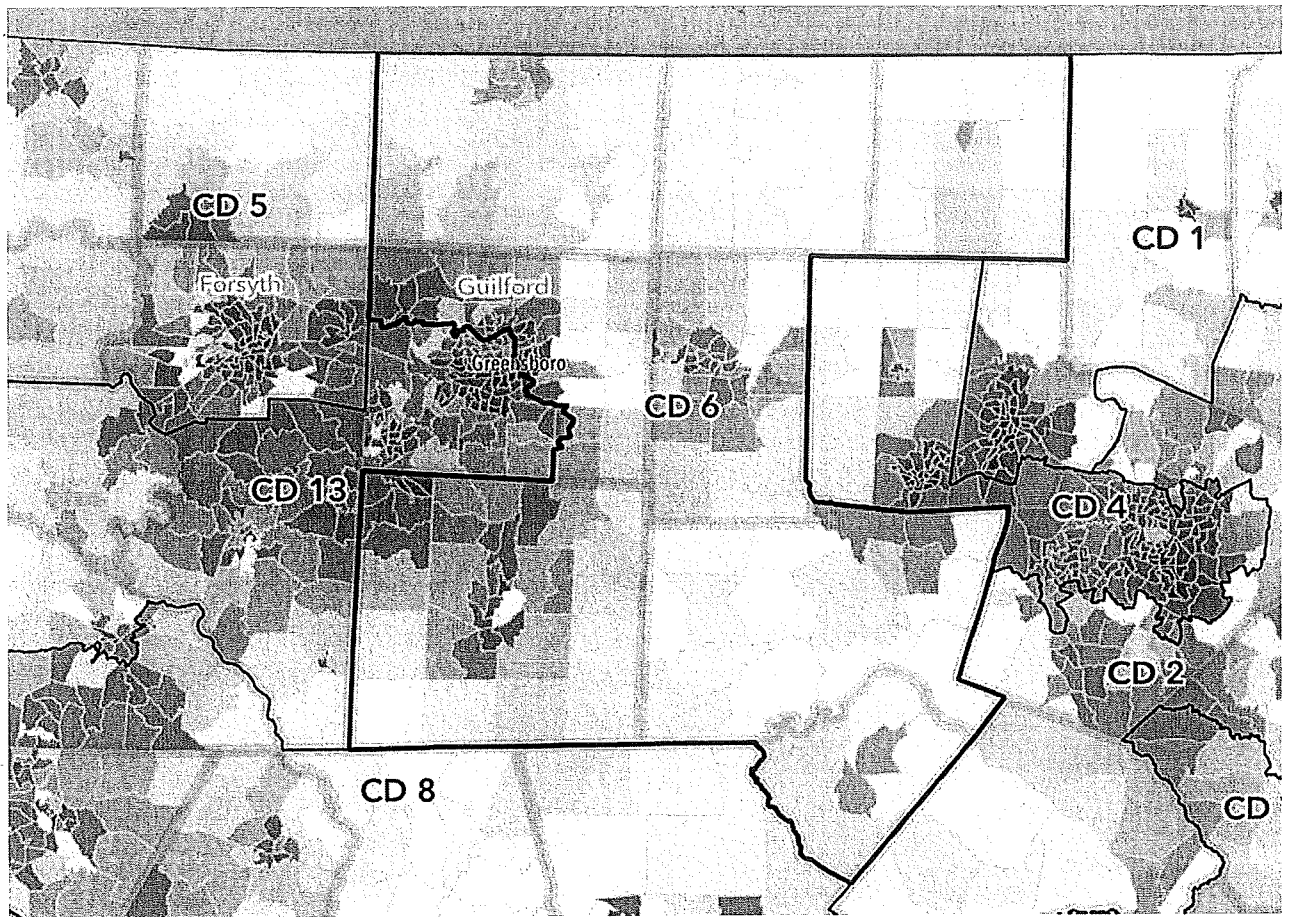
Congressional District 6

91. Greensboro is the third-largest city in North Carolina and home to one of the largest concentrations of Democratic voters in the state. It also fell victim to one of the most egregious examples of cracking in the 2016 Plan.

RESPONSE: Admitted that Greensboro is the third-largest city by population in North Carolina and has a relatively large concentration of Democratic voters, compared to other areas of the state, and that Greensboro's Democratic voters were split between Districts 6 and 13 in the 2016 Plan. State Defendants lack sufficient information to admit the remaining allegations and therefore deny the same.

92. As shown in the image below, the 2016 Plan splits Greensboro—and Guilford County—and subsumes each half within a much larger concentration of Republican voters. The southwestern half of Guilford County is now part of District 13 and the other half belongs to District 6, cracking that causes both districts to be safe Republican seats. As noted previously, the map also separates the Democratic voters in both of these districts from Forsyth County's

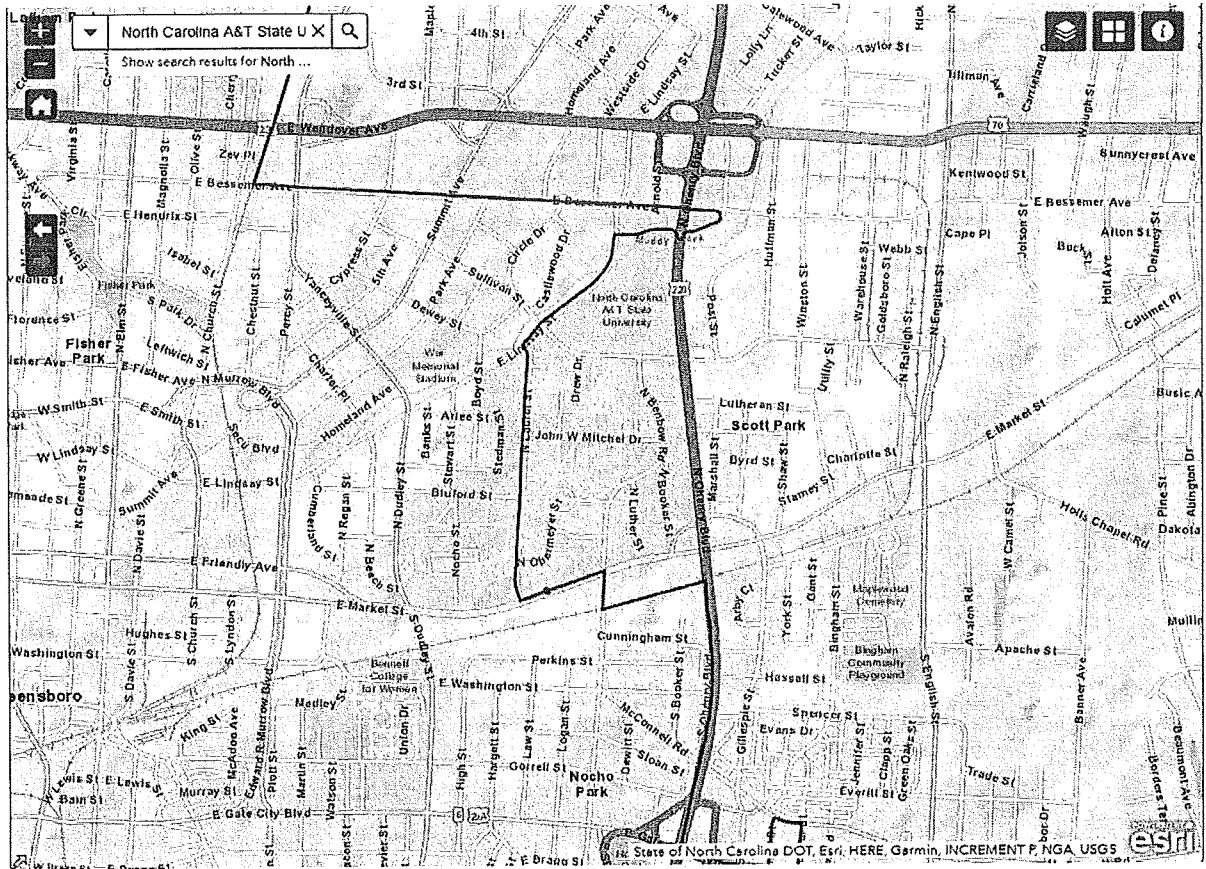
Democratic voters in District 5.



RESPONSE: Admitted that partisan data, together with evidence introduced and findings made in *Common Cause v. Rucho*, indicates that Districts 6 and 13 were drawn in a way that dilutes Democratic voting strength and favors Republicans by splitting Guilford County Democratic voters between Districts 6 and 13. It is further admitted that Democratic voters in Winston-Salem are separated from Democratic voters from Guilford County who were placed in Districts 6 and 13 in the 2016 Plan. State Defendants lack sufficient information to admit the remaining allegations and therefore deny the same.

93. In cracking Greensboro's Democratic voters, Legislative Defendants split the

campus of North Carolina A&T State University, which is the largest historically black university in the country. The district boundary cuts straight through the campus, placing the west side of campus in District 13 and the east side of campus in District 6, as shown below:



RESPONSE: Admitted that the 2016 Plan splits Greensboro's Democratic voters into two congressional districts, and that on information and belief North Carolina A&T State University is the largest historically black university in the country, and that the campus of North Carolina A&T State University is split between District 6 and District 13. State Defendants lack sufficient information to admit the remaining allegations and therefore deny the same.

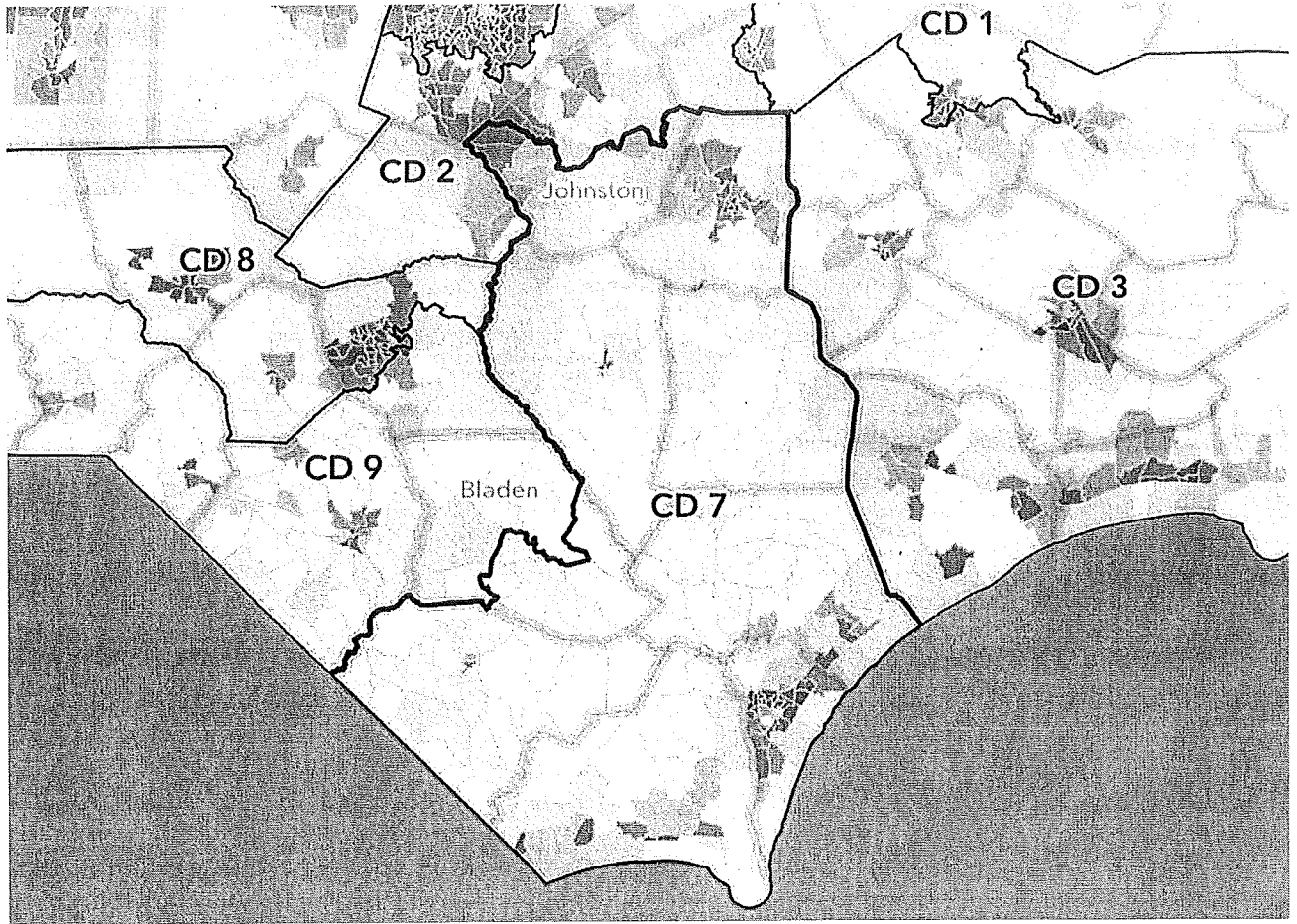
94. As a result of this cracking, the Republican candidate has won District 6 by

comfortable margins, with 59.2% and 56.5% of the vote in 2016 and 2018, respectively.

RESPONSE: Admitted that partisan data, together with evidence introduced and findings made in *Common Cause v. Rucho*, indicates that Congressional District 6 was drawn in a way that split Greensboro and Guilford County to dilute Democratic voting strength and favor Republicans. State Defendants further admit the allegations in this paragraph to the extent that they reflect the results of the 2016 and 2018 elections. State Defendants lack sufficient information to admit the remaining allegations and therefore deny the same.

Congressional District 7

95. The 2016 Plan cracks Democratic voters in District 7. As already explained, at the north end of District 7, the map cracks Johnston County's Democratic voters between Districts 7 and 2. Likewise, on the west side of District 7, the map cracks Democratic voters in Bladen County, splitting the most heavily Democratic VTDs between Districts 7 and 9.



RESPONSE: Admitted that partisan data, together with evidence introduced and findings made in *Common Cause v. Rucho*, indicates that Congressional District 7 was drawn in a way that dilutes Democratic voting strength and favors Republicans in part by splitting Johnston County's Democratic voters between Districts 2 and 7 and by splitting Bladen County's Democratic historically democratic precincts between Districts 7 and 9. State Defendants lack sufficient information to admit the remaining allegations and therefore deny the same.

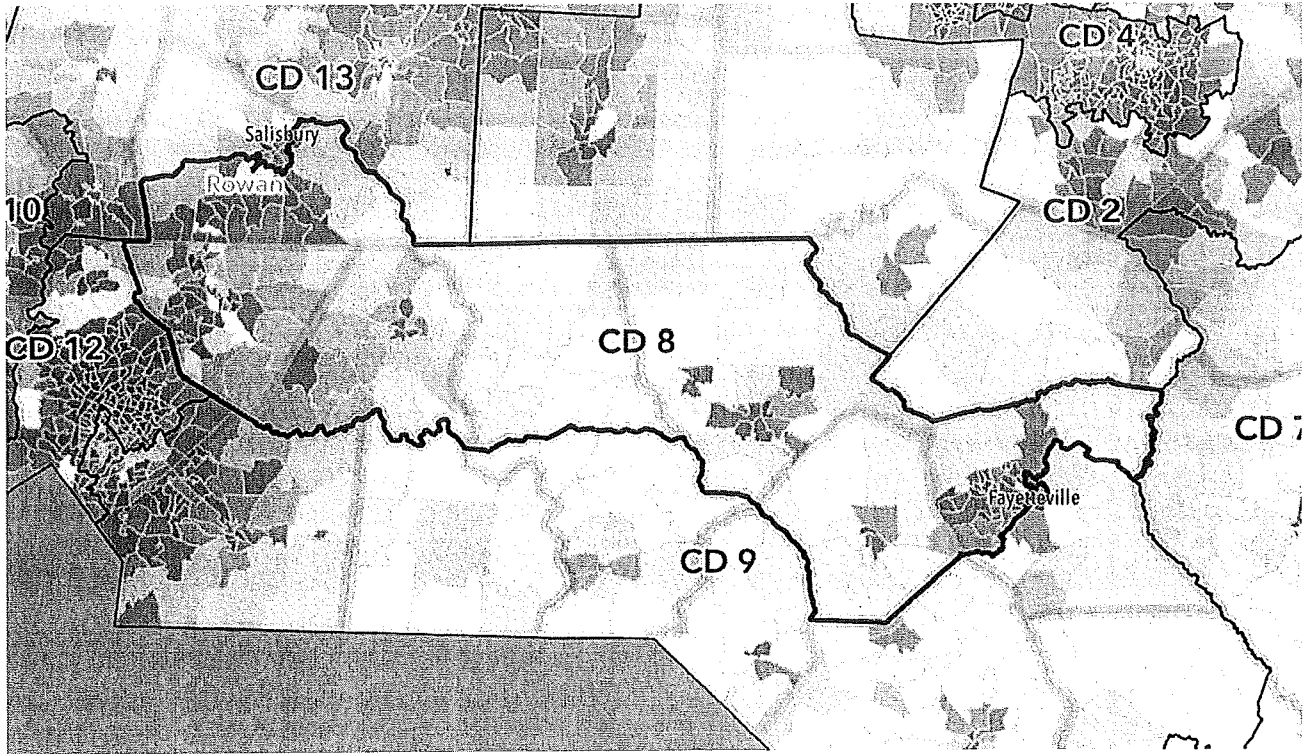
96. As a result of this cracking, District 7 has remained a safe Republican seat. The Republican candidate won District 7 with 60.9% and 56.5% of the vote in 2016 and 2018,

respectively.

RESPONSE: Admitted that Democratic voters were split in the creation of District 7, thereby diluting Democratic voting strength and favoring Republicans. State Defendants further admit the allegations in this paragraph to the extent that they reflect the results of the 2016 and 2018 elections. State Defendants lack sufficient information to admit the remaining allegations and therefore deny the same.

Congressional District 8

97. Fayetteville is North Carolina's sixth most-populous city and is heavily Democratic. The 2016 Plan cracks Fayetteville's Democratic voters nearly down the middle, placing one group in District 8 and the other in District 9. District 8 then slices to the west, picking up Republican voters in county after county until stopping halfway through Rowan County, right before the district would hit the Democratic voters of Salisbury, who are carefully excluded from District 8 and placed into District 13 instead.



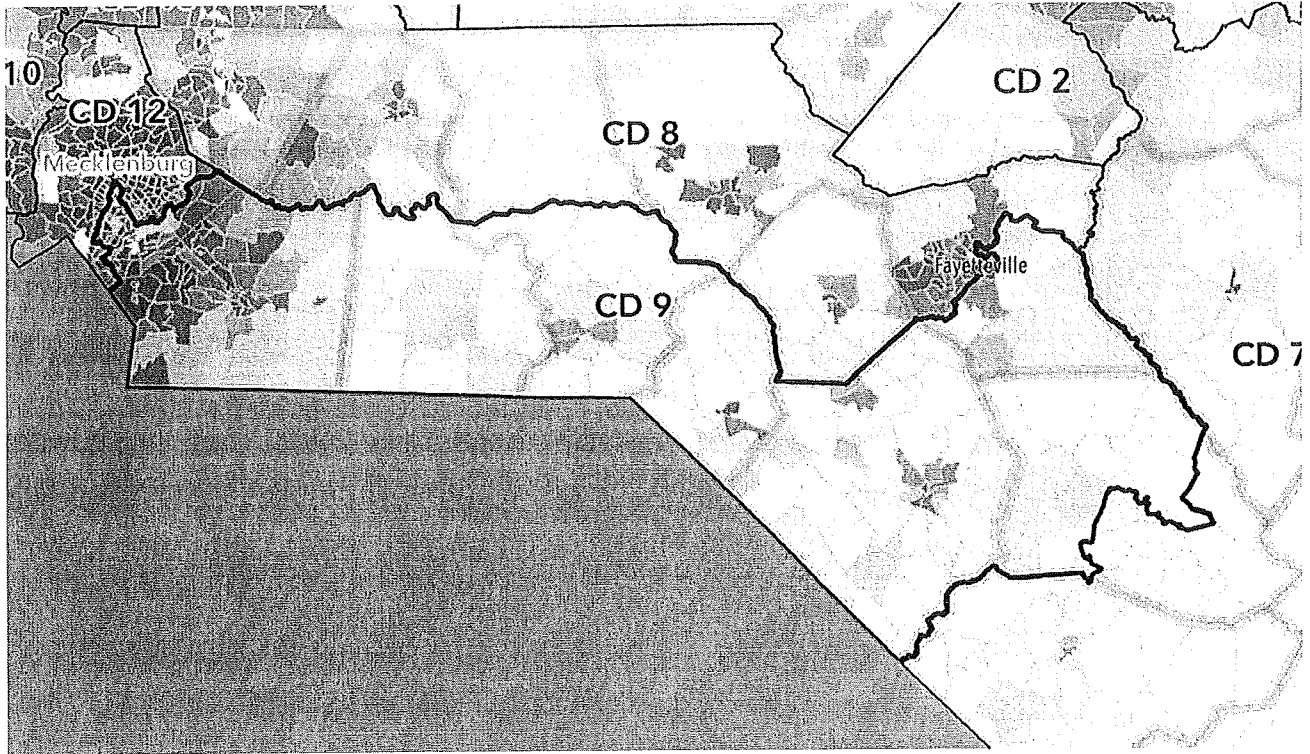
RESPONSE: Admitted that Fayetteville is North Carolina's sixth most-populous city and, based on partisan data and evidence introduced and findings made in *Common Cause v. Rucho*, is heavily Democratic. It is further admitted, again based on the foregoing sources, that District 8 was drawn in a way that dilutes Democratic voting strength and that favors Republicans in part by splitting Fayetteville's Democratic voters between Districts 8 and 9. It is further admitted that District 8 splits Rowan County to the west and does not appear to include most voters in Salisbury, who are placed into District 13 instead. State Defendants lack sufficient information to admit the remaining allegations and therefore deny the same.

98. As a result of this cracking, District 8 has remained a safe Republican seat. The Republican candidate won District 8 with 58.8% and 55.3% of the vote in 2016 and 2018, respectively.

RESPONSE: Admitted that partisan data, together with evidence introduced and findings made in *Common Cause v. Rucho*, indicates that Congressional District 8 was drawn in a way that dilutes Democratic voting strength and that favors Republicans in part by splitting Democratic voters between districts. State Defendants further admit the allegations in this paragraph to the extent that they reflect the results of the 2016 and 2018 elections. State Defendants lack sufficient information to admit the remaining allegations and therefore deny the same.

Congressional District 9

99. District 9 is a near mirror image of District 8. District 9 contains the other half of Fayetteville’s Democratic voters and then, like District 8, stretches west to pick up Republican voters. District 9 reaches into Mecklenburg County and picks up the “pizza slice” in Mecklenburg County that contains the county’s most Republican-leaning VTDs. District 9’s boundaries carefully exclude virtually all of Mecklenburg County’s Democratic VTDs, which instead are packed into District 12.



RESPONSE: Admitted that partisan data, together with evidence introduced and findings made in *Common Cause v. Rucho*, indicates that Congressional District 9 was drawn in a way that favors Republicans, in part by splitting Democratic voters in Fayetteville between Districts 8 and 9 and by including a predominantly Republican portion of Charlotte that resembles a pizza slice, along with Republican-leaning suburbs of Charlotte. It is further admitted that the predominantly Democratic sections of Mecklenburg County were placed in District 12. State Defendants lack sufficient information to admit the remaining allegations and therefore deny the same.

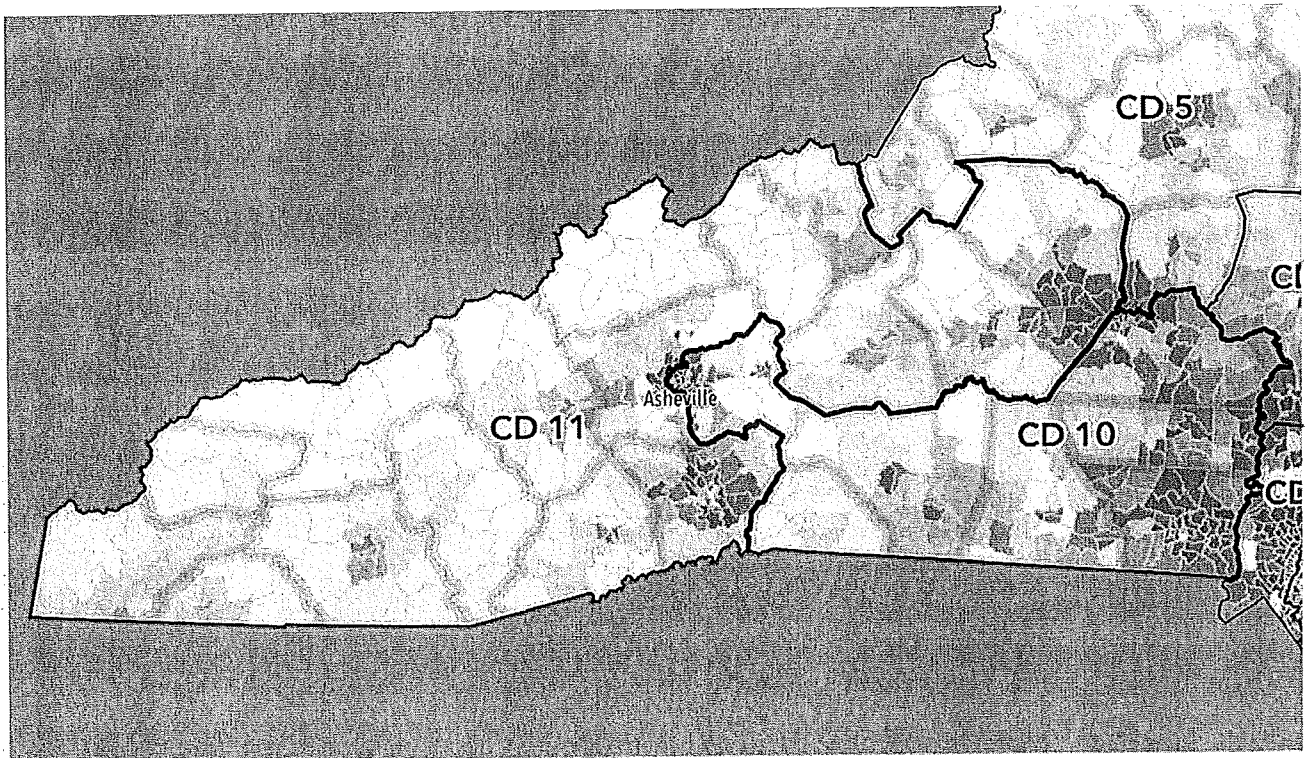
100. In the elections under the 2016 Plan, District 9 has bent but not broken, remaining a Republican seat. Even the fact that District 9's 2018 Republican candidate was involved in a high-profile election-fraud scandal that resulted in the invalidation of the 2018 election results

for that district could not counterbalance the extreme gerrymander. The Republican candidate won the September 2019 special election in District 9 with 51% of the vote.

RESPONSE: State Defendants admit that the Republican candidate has won District 9 ever since the 2016 Plan was enacted. It is further admitted that District 9's 2018 Republican candidate was involved in a high-profile election-fraud scandal that resulted in the invalidation of the 2018 election results for that district, and that the Republican candidate won the September 2019 special election by the margin cited. State Defendants lack sufficient information to admit the remaining allegations and therefore deny the same.

Congressional Districts 10 and 11

101. The 2016 Plan egregiously cracks Asheville's Democratic voters between Districts 10 and 11 to create two safe Republican seats. This cracking dilutes the voting power of Asheville's Democratic voters and ensures that they cannot elect a candidate of their choice.



RESPONSE: Admitted that partisan data, together with evidence introduced and findings made in *Common Cause v. Rucho*, indicates that Congressional Districts 10 and 11 were drawn in a way to dilute Democratic voting strength and to favor Republicans in part by splitting Democratic voters in Asheville between Districts 10 and 11. State Defendants lack sufficient information to admit the remaining allegations and therefore deny the same.

102. The boundary between Districts 10 and 11 splits the campus of UNC Asheville in two, even going so far as to place students living on different sides of the same residential dormitory into different congressional districts, as shown in the image below:²



RESPONSE: State Defendants lack sufficient information to admit these allegations and therefore deny the same, and admit that the source in the footnote speaks for itself.

² See *Two UNC Asheville Dorms Are Bisected by Gerrymandered District Boundaries*, Districks (Oct. 26, 2018), <https://blog.districks.com/2018/10/26/two-unc-asheville-dorms-are-bisected-by-gerrymandered-district-lines/>.

103. The cracking of Asheville's Democratic voters has been successful. The Republican candidates in Districts 10 and 11 won both seats with between 58% and 63% of the vote in the 2016 and 2018 elections.

RESPONSE: Admitted that partisan data, together with evidence introduced and findings made in *Common Cause v. Rucho*, indicates that Congressional Districts 10 and 11 were drawn in a way to dilute Democratic voting strength and to favor Republicans in part by splitting Democratic voters in Asheville between Districts 10 and 11, that Republican candidates in Districts 10 and 11 won both seats in 2016 and 2018. State Defendants further admit the allegations in this paragraph to the extent that they reflect the results of the 2016 and 2018 elections. State Defendants lack sufficient information to admit the remaining allegations and therefore deny the same.

Congressional District 12

104. District 12 is another packed Democratic district. Dr. Hofeller admitted in sworn testimony that he intentionally drew District 12 to be "predominantly Democratic." Hofeller Dep. 192:7-16. District 12 packs all of Mecklenburg County's most Democratic VTDs, carefully excluding the Republican-leaning "pizza slice" in the southern part of Mecklenburg County to ensure that District 12 is an overwhelmingly Democratic district.



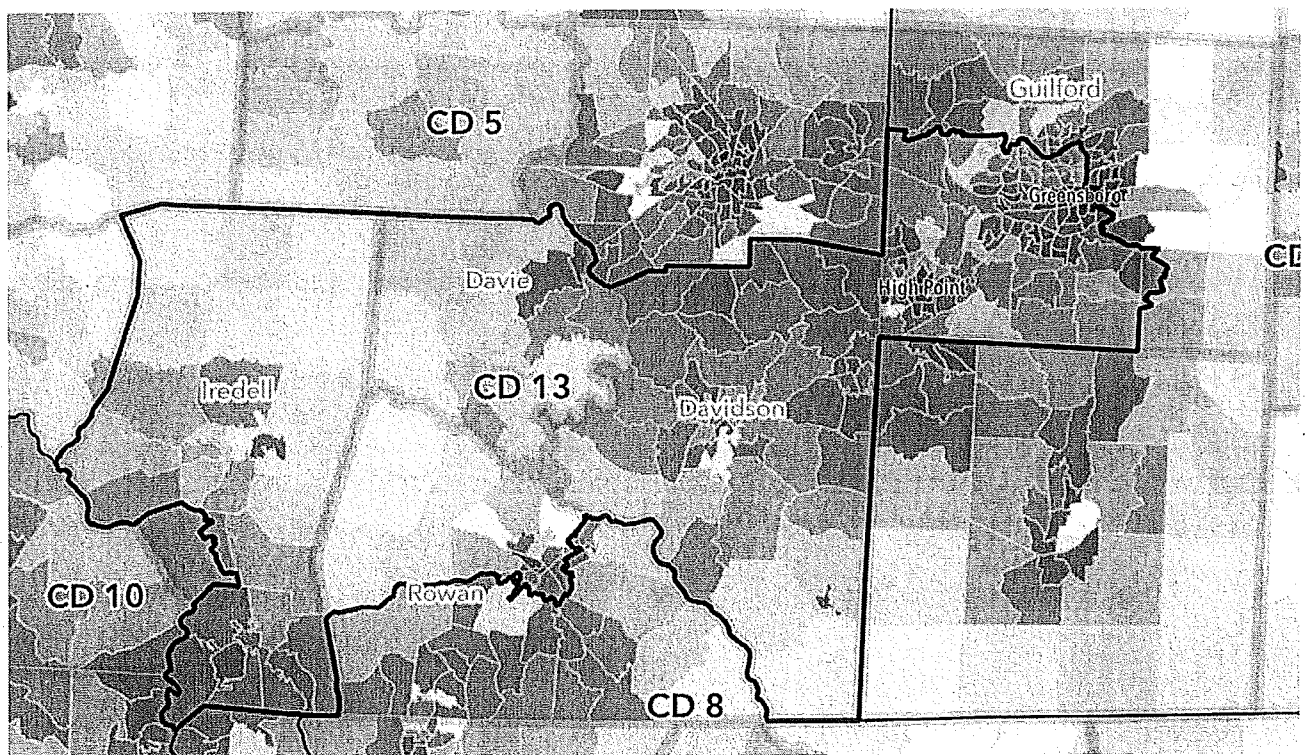
RESPONSE: Admitted that partisan data, together with evidence introduced and findings made in *Common Cause v. Rucho*, indicates that Congressional District 12 was drawn in a way to concentrate Democratic voters by including most of Mecklenburg County's historically democratic precincts and excluding many historically Republican ones, including a portion of Charlotte resembling a pizza slice. State Defendants further admit the allegations in this paragraph to the extent that they reflect the testimony cited. State Defendants lack sufficient information to admit the remaining allegations and therefore deny the same.

105. As a result of this packing, the Democratic candidate won District 12 with 67.0% and 73.1% of the vote in 2016 and 2018, respectively.

RESPONSE: Admitted that partisan data, together with evidence introduced and findings made in *Common Cause v. Rucho*, indicates that Congressional District 12 was drawn in a way to concentrate Democratic voters. State Defendants further admit the allegations in this paragraph to the extent that they reflect the results of the 2016 and 2018 elections. State Defendants lack sufficient information to admit the remaining allegations and therefore deny the same.

Congressional District 13

106. District 13 contains the other cracked half of Guilford County. District 13 groups Guilford County's heavily Democratic voters in and around Greensboro and High Point with overwhelmingly Republican areas in Davidson, Davie, Rowan, and Iredell Counties, ensuring that Guilford County's Democratic voters cannot elect a Democrat.



RESPONSE: Admitted that partisan data, together with evidence introduced and findings made in *Common Cause v. Rucho*, indicates that Congressional District 13 was drawn in a way that dilutes Democratic voting strength and favors Republicans by splitting Guilford County Democratic voters between Districts 6 and 13, and that a Democrat has not won this seat in its current configuration. State Defendants lack sufficient information to admit the remaining allegations and therefore deny the same.

107. The Republican candidate won District 13 in 2016 and 2018 with 56.1% and 53.1% of the vote, respectively.

RESPONSE: State Defendants admit the allegations in this paragraph to the extent that they reflect the results of the 2016 and 2018 elections.

F. Legislative Defendants Did Not Draw Any District in the 2016 Congressional Map to Comply with the Voting Rights Act

108. Legislative Defendants and Dr. Hofeller expressly stated both during and after the 2016 redistricting process that they did not create any district in an effort to comply with the Voting Rights Act (VRA). *See* Hofeller Dep. 145:9-146:8, 183:22-184:9.

RESPONSE: State Defendants admit the allegations in this paragraph to the extent that they reflect the testimony cited.

109. The 2016 Adopted Criteria provided as follows: “Data identifying the race of individuals or voters shall not be used in the construction or consideration of districts.”

RESPONSE: State Defendants admit the allegations in this paragraph to the extent that they reflect the criteria cited.

110. Legislative Defendants stated over and over again that they were not making any effort to draw districts on account of the VRA because they had concluded that the third *Gingles* factor was not met with respect to any district. The third *Gingles* factor requires the existence of legally sufficient white bloc voting against the candidate of choice of African Americans. Representative Lewis and Senator Rucho stated that, because they did not believe there was sufficient racially polarized voting, they had concluded that the VRA did not require the creation of any minority opportunity congressional districts. *See* Lewis Dep. at 38:15-19, 51:15-19, 86:2-4, 118:23-119:23, 179:13-21; Deposition of Representative David Lewis (“Lewis Dep. II”) at 242:9-13 (Apr. 28, 2017); Rucho Dep. at 31:2-8. Representative Lewis told the Joint Committee that “the *Harris* opinion found that there was not racially polarized voting in the state, and therefore, the race of the voters should not be considered.” Joint Comm. Session, Feb. 16, 2016, at 27:11-14.

RESPONSE: State Defendants admit the allegations in this paragraph to the extent that they reflect the testimony cited.

G. The U.S. Supreme Court Holds that Partisan Gerrymandering Claims Are Left to State Courts Applying State Constitutions

111. In August 2016, the North Carolina Democratic Party, Common Cause, and more than a dozen individual North Carolina voters sued Representative Lewis, Senator Rucho, and other state defendants in federal court, asserting that the 2016 Plan was a partisan gerrymander in violation of the *federal* constitution. *Rucho v. Common Cause*, 139 S. Ct. 2484, 2491 (2019).

RESPONSE: Admitted.

112. After a four-day trial, a three-judge federal district court unanimously concluded that the General Assembly “drew and enacted the 2016 Plan with intent to subordinate the interests of non-Republican voters and entrench Republican control of North Carolina’s congressional delegation.” *Common Cause v. Rucho*, 279 F. Supp. 3d 587, 672 (M.D.N.C. 2018). The court further found that “the 2016 Plan achieved the General Assembly’s discriminatory partisan objective.” *Id.* The court therefore held the 2016 Plan violated the Fourteenth Amendment’s Equal Protection Clause and Article I of the U.S. Constitution. The court further held, with one dissenter, that the 2016 Plan also violated the First Amendment. *Id.*

RESPONSE: State Defendants admit these allegations to the extent that they state the factual findings and legal conclusions in *Rucho v. Common Cause*, 139 S. Ct. 2484 (2019).

113. The U.S. Supreme Court reversed, holding that partisan gerrymandering claims are not justiciable under the *federal* constitution. *Rucho*, 139 S. Ct. at 2506-07. Nonetheless, the Court observed that partisan gerrymanders like the 2016 Plan are “incompatible with democratic principles.” *Id.* And, of particular relevance here, the Court recognized that the 2016 Plan is “highly partisan, by any measure.” *Id.* at 2491. While the decision ultimately holds that “partisan gerrymandering claims present political questions beyond the reach of the *federal* courts,” the Court made clear that its conclusion “does not condone excessive partisan gerrymandering[,] [n]or does [its] conclusion condemn complaints about districting to echo into a void.” *Id.* at 2507 (emphasis added).

RESPONSE: State Defendants admit these allegations to the extent that they state the factual findings and legal conclusions in *Rucho v. Common Cause*, 139 S. Ct. 2484 (2019).

114. Instead, the U.S. Supreme Court noted that “[t]he States . . . are actively addressing the issue on a number of fronts” under *state* constitutional provisions. *See id.* The Court made clear that “[p]rovisions in state statutes and *state constitutions* can provide standards and guidance for *state courts* to apply.” *Id.* (emphases added).

RESPONSE: State Defendants admit these allegations to the extent that they state the factual findings and legal conclusions in *Rucho v. Common Cause*, 139 S. Ct. 2484 (2019).

H. The Superior Court Strikes Down North Carolina’s State Legislative Maps Under the North Carolina Constitution

115. On September 3, 2019, a three-judge panel of this Court unanimously invalidated North Carolina’s state House and state Senate 2017 redistricting plans (“2017 Plans”) under the North Carolina Constitution. *See Common Cause v. Lewis*, 18-CVS-014001, slip. op. at 10.

RESPONSE: Admitted.

116. The *Common Cause* Court explained that North Carolina’s state legislative maps and the 2016 Congressional Plan “arose in remarkably similar circumstances.” *Id.* at 298. “[B]oth the 2016 Congressional map and the 2017 legislative maps were required after a federal court declared existing maps unconstitutional; both were drawn under the direction of many of the same actors working on behalf of the Republican-controlled General Assembly; both were drawn by Dr. Thomas Hofeller; both were drawn in large part before the General Assembly’s redistricting committee met and approved redistricting criteria; and both, as has been found . . . with respect to the 2017 legislative maps, were drawn with the intent to maximize partisan advantage and, in fact, achieved their intended partisan effects.” *Id.*

RESPONSE: State Defendants admit these allegations to the extent that they state the

factual findings and legal conclusions in *Common Cause v. Lewis*, 18-CVS-014001 (N.C. Sup. Ct. Sept. 3, 2019).

117. The Court found that the 2017 state legislative maps “do not permit voters to freely choose their representative, but rather representatives are choosing voters based upon sophisticated partisan sorting.” *Id.* at 10.

RESPONSE: State Defendants admit these allegations to the extent that they state the factual findings and legal conclusions in *Common Cause v. Lewis*, 18-CVS-014001 (N.C. Sup. Ct. Sept. 3, 2019).

118. The Court determined that the plaintiffs had standing to challenge the state legislative maps, and that their challenges were justiciable under the North Carolina Constitution. *Id.* at 292-98, 331-41. And, on the merits, the Court held that the state legislative maps were partisan gerrymanders that violated the North Carolina Constitution’s Free Elections Clause, Art. I, § 10, Equal Protection Clause, Art. I, § 19, and Free Speech and Assembly Clauses, Art. I, §§ 12, 14. *See Common Cause*, 18-CVS-014001, slip. op. at 7-10.

RESPONSE: State Defendants admit these allegations to the extent that they state the factual findings and legal conclusions in *Common Cause v. Lewis*, 18-CVS-014001 (N.C. Sup. Ct. Sept. 3, 2019).

119. The 2016 Plan violates the North Carolina Constitution in the exact same ways as the 2017 state legislative maps that were recently invalidated in *Common Cause*.

RESPONSE: It is admitted that it appears that the 2016 Plan likely violates the North

Carolina Constitution similarly to how the 2017 legislative maps were found to violate the state constitution in *Common Cause*. Except as expressly admitted, denied.

COUNT ONE
Violation of the North Carolina Constitution's
Free Elections Clause, Art. I, § 10

120. Plaintiffs hereby incorporate all other paragraphs as if fully set forth herein.

RESPONSE: State Defendants incorporate their previous responses.

121. Article I, Section 10 of the North Carolina Constitution, which has no counterpart in the U.S. Constitution, provides that “All elections shall be free.”

RESPONSE: State Defendants admit that the North Carolina Constitution speaks for itself concerning its content, and that the U.S. Constitution has no counterpart to the Free Elections Clause.

122. North Carolina’s Free Elections Clause traces its roots to the 1689 English Bill of Rights, which declared that “Elections of members of Parliament ought to be free.” Bill of Rights 1689, 1 W. & M. c. 2 (Eng.); see John V. Orth, *North Carolina Constitutional History*, 70 N.C. L. Rev. 1759, 1797-98 (1992).

RESPONSE: Admitted that Paragraph 122 states a historical finding of the *Common Cause* decision. State Defendants lack sufficient information to admit or deny the substance of the allegations of this paragraph, and the same are therefore denied.

123. This provision of the 1689 English Bill of Rights was a product of the king’s

efforts to manipulate parliamentary elections, including by changing the electorate in different areas to achieve “electoral advantage.” J.R. Jones, *The Revolution of 1688 in England* 148 (1972). The king’s efforts to maintain control of parliament by manipulating elections led to a revolution. After dethroning the king, the revolutionaries called for a “free and lawful parliament” as a critical reform. Grey S. De Krey, *Restoration and Revolution in Britain: A Political History of the Era of Charles II and the Glorious Revolution* 241, 247-48, 250 (2007).

RESPONSE: Admitted that Paragraph 123 states historical findings of the *Common Cause* decision. State Defendants lack sufficient information to admit or deny the substance of the allegations of this paragraph, and the same are therefore denied.

124. North Carolina has strengthened the Free Elections Clause since its adoption to reinforce its principal purpose of preserving the popular sovereignty of North Carolinians. The original clause, adopted in 1776, provides that “elections of members, to serve as Representatives in the General Assembly, ought to be free.” N.C. Declaration of Rights, VI (1776). Nearly a century later, North Carolina revised the clause to state that “[a]ll elections ought to be free,” thus expanding the principle to include all elections in North Carolina. N.C. Const. art. I, § 10 (1868). And another century later, North Carolina adopted the current version which provides that “[a]ll elections *shall* be free.” As the North Carolina Supreme Court later explained, this change was intended to “make [it] clear” that the Free Elections Clause and the other rights secured to the people by the Declaration of Rights “are commands and not mere admonitions” to proper conduct on the part of the government. *N.C. State Bar v. DuMont*, 304 N.C. 627, 635, 639, 286 S.E.2d 89, 97 (1982) (internal quotations omitted).

RESPONSE: Admitted that Paragraph 122 states historical findings of the *Common*

Cause decision. State Defendants lack sufficient information to admit or deny the substance of the allegations of this paragraph, and the same are therefore denied.

125. Based on the text and history of North Carolina’s Free Elections Clause, “the meaning of the Free Elections Clause is that elections must be conducted freely and honestly to ascertain, fairly and truthfully, the will of the people. This . . . is a fundamental right of the citizens enshrined in our Constitution’s Declaration of Rights, a compelling governmental interest, and a cornerstone of our democratic form of government.” *Common Cause v. Lewis*, 18-CVS-014001, slip. op. at 298-306.

RESPONSE: State Defendants admit these allegations to the extent that they state the factual findings and legal conclusions in *Common Cause v. Lewis*, 18-CVS-014001 (N.C. Sup. Ct. Sept. 3, 2019).

126. “[P]artisan gerrymandering . . . strikes at the heart of the Free Elections Clause.” *Id.* at 305. “[E]xtreme partisan gerrymandering—namely redistricting plans that entrench politicians in power, that evince a fundamental distrust of voters by serving the self-interest of political parties over the public good, and that dilute and devalue votes of some citizens compared to others—is contrary to the fundamental right of North Carolina citizens to have elections conducted freely and honestly to ascertain, fairly and truthfully, the will of the people.” *Id.* at 302. Simply put, “[e]lections are not free when partisan actors have tainted future elections by specifically and systematically designing the contours of the election districts for partisan purposes and a desire to preserve power.” *Id.* at 305.

RESPONSE: State Defendants admit these allegations to the extent that they state the

factual findings and legal conclusions in *Common Cause v. Lewis*, 18-CVS-014001 (N.C. Sup. Ct. Sept. 3, 2019).

127. The 2016 Plan violates the Free Elections Clause in the same way as the invalidated 2017 state legislative plans. In creating the 2016 Plan, Legislative Defendants “specifically and systematically design[ed] the contours of the election districts for partisan purposes and a desire to preserve power.” *Id.* at 305. The 2016 Plan “unlawfully seek[s] to predetermine election outcomes in specific districts” and across the state as a whole. *Id.* Because of Legislative Defendants’ extreme partisan gerrymandering of the 2016 Plan, congressional elections in North Carolina are not “conducted freely and honestly to ascertain, fairly and truthfully, the will of the people.” *Id.* at 302.

RESPONSE: State Defendants admit that it appears that applying the decision in *Common Cause* to the facts presented in *Rucho* suggests that the 2016 Plan likely violates the Free Elections Clause.

128. Legislative Defendants openly admitted all of this with respect to the 2016 Plan. They expressly stated—and even made an official part of the 2016 Adopted Criteria—that they were endeavoring to maintain “Partisan Advantage” such that, for each election under the new map, Republicans would win 10 seats in North Carolina’s congressional delegation and Democrats would win only 3 seats. The 2016 Adopted Criteria on their face violate the Free Elections Clause.

RESPONSE: State Defendants admit these allegations to the extent that they reflect the adopted criteria.

COUNT TWO
Violation of the North Carolina Constitution's
Equal Protection Clause, Art. I, § 19

129. Plaintiffs hereby incorporate all other paragraphs as if fully set forth herein.

RESPONSE: State Defendants incorporate their previous responses.

130. Article I, Section 19 of the North Carolina Constitution provides in relevant part that “[n]o person shall be denied the equal protection of the laws.”

RESPONSE: State Defendants admit that the North Carolina Constitution speaks for itself concerning its content.

131. North Carolina’s Equal Protection Clause affords broader protections to its citizens in the voting rights context than the U.S. Constitution’s equal protection provisions. *See Stephenson v. Bartlett*, 355 N.C. 354, 376-81 & n.6, 562 S.E.2d 377, 393-95 & n.6 (2002); *Blankenship v. Bartlett*, 363 N.C. 518, 523-24, 681 S.E.2d 759, 763 (2009).

RESPONSE: State Defendants admit these allegations to the extent that they reflect the factual findings and legal conclusions in the cases cited.

132. Irrespective of its federal counterpart, North Carolina’s Equal Protection Clause protects the right to “substantially equal voting power.” *Stephenson*, 355 N.C. at 379, 562 S.E.2d at 394. “It is well settled in this State that the right to vote on equal terms is a fundamental right.” *Id.* at 378, 562 S.E.2d at 393 (internal quotation marks omitted). Thus, the North Carolina Supreme Court has enforced the State’s Equal Protection Clause to invalidate other redistricting schemes, such as the combined use of single-member and multi-member districts in a

redistricting plan that “impermissibly distin[guished] among similarly situated citizens” and thus “necessarily implicate[d] the fundamental right to vote on equal terms.” *Id.* at 377-78, 562 S.E.2d at 393.

RESPONSE: State Defendants admit these allegations to the extent that they reflect the factual findings and legal conclusions in *Stephenson v. Bartlett*, 355 N.C. 354, 562 S.E.2d 377, (2002).

133. Partisan gerrymandering violates North Carolina’s Equal Protection Clause. “[P]artisan gerrymandering runs afoul of the State’s obligation to provide all persons with equal protection of law because, by seeking to diminish the electoral power of supporters of a disfavored party, a partisan gerrymander treats individuals who support candidates of one political party less favorably than individuals who support candidates of another party.” *Common Cause v. Lewis*, 18-CVS-014001, slip. op. at 307.

RESPONSE: State Defendants admit these allegations to the extent that they state the factual findings and legal conclusions in *Common Cause v. Lewis*, 18-CVS-014001 (N.C. Sup. Ct. Sept. 3, 2019).

134. The 2016 Plan violates North Carolina’s Equal Protection Clause in the same ways as the invalidated 2017 state legislative plans. In drawing the 2016 Plan, Legislative Defendants “acted with the intent, unrelated to any legitimate legislative objection, to classify voters and deprive citizens of the right to vote on equal terms.” *Id.* at 312. The 2016 Plan’s intentional classification of, and discrimination against, Democratic voters is plain. The Republican leaders of the Joint Committee explicitly used “partisan advantage” and “political data” as criteria in

drawing the congressional district lines. Specifically, the 2016 Adopted Criteria *required* drawing congressional district lines to give Republicans control of 10 of the 13 congressional seats. *See id.* And Legislative Defendants succeeded in this goal. Republicans maintained control of 10 of the 13 seats following the 2016 and 2018 congressional elections, despite losing the statewide vote in 2018. The Joint Committee’s intent is also laid bare by the packing and cracking of particular Democratic communities.

RESPONSE: State Defendants admit these allegations to the extent that they state the factual findings and legal conclusions in *Common Cause v. Lewis*, 18-CVS-014001 (N.C. Sup. Ct. Sept. 3, 2019). State Defendants further admit that it appears that applying the decision in *Common Cause* to the facts presented in *Rucho* suggests that the 2016 Plan likely violates the Equal Protection Clause.

135. These efforts have produced discriminatory effects for Plaintiffs and other Democratic voters. On a statewide basis, Democrats receive far fewer congressional seats than they would absent the gerrymander. The grossly disproportionate number of seats that Republicans have won and will continue to win in the congressional delegation relative to their share of the statewide vote cannot be explained or justified by North Carolina’s political geography or any legitimate redistricting criteria. The packing and cracking of Democratic voters under the 2016 Plan burdens the representational rights of Democratic voters individually and as a group and discriminates against Democratic candidates and organizations individually and as a group. “[P]acking dilutes the votes of Democratic voters such that their votes, when compared to the votes of Republican voters, are substantially less likely to ultimately matter in deciding the election results.” *Common Cause*, 18-CVS-014001, slip. op. at 314. And “the entire purpose of

cracking likeminded voters across multiple districts is so they do not have sufficient ‘voting power’ to join together and elect a candidate of their choice.” *Id.* Legislative Defendants can offer no legitimate justification for their overriding partisan intent in drawing the 2016 Plan.

RESPONSE: State Defendants admit these allegations to the extent that they state the factual findings and legal conclusions in *Common Cause v. Lewis*, 18-CVS-014001 (N.C. Sup. Ct. Sept. 3, 2019). State Defendants further admit that it appears that applying the decision in *Common Cause* to the facts presented in *Rucho* suggests that the 2016 Plan likely violates the Equal Protection Clause.

COUNT THREE
Violation of North Carolina Constitution’s
Freedom of Speech and Freedom of Assembly Clauses, Art. I, §§ 12 & 14

136. Plaintiffs hereby incorporate all other paragraphs as if fully set forth herein.

RESPONSE: State Defendants incorporate their previous responses.

137. Article I, § 12 of the North Carolina Constitution provides in relevant part: “The people have a right to assemble together to consult for their common good, to instruct their representatives, and to apply to the General Assembly for redress of grievances.”

RESPONSE: State Defendants admit that the North Carolina Constitution speaks for itself concerning its content.

138. Article I, § 14 of the North Carolina Constitution provides in relevant part: “Freedom of speech and of the press are two of the great bulwarks of liberty and therefore shall never be restrained.”

RESPONSE: State Defendants admit that the North Carolina Constitution speaks for itself concerning its content.

139. “[T]he North Carolina Constitution’s Free Speech Clause provides broader rights than does federal law.” *Common Cause*, 18-CVS-014001, slip. op. at 318. “In the context of partisan gerrymandering, it is especially important that North Carolina courts give independent force to North Carolina’s constitutional protections.” *Id.* at 319.

RESPONSE: State Defendants admit these allegations to the extent that they state the factual findings and legal conclusions in *Common Cause v. Lewis*, 18-CVS-014001 (N.C. Sup. Ct. Sept. 3, 2019).

140. “Voting for the candidate of one’s choice and associating with the political party of one’s choice are core means of political expression protected by the North Carolina Constitution’s Freedom of Speech and Freedom of Assembly Clauses.” *Id.* at 320. “Voting provides citizens a direct means of expressing support for a candidate and his views.” *Id.* And “[j]ust as voting is a form of protected expression, banding together with likeminded citizens in a political party is a form of protected association.” *Id.* at 321.

RESPONSE: State Defendants admit these allegations to the extent that they state the factual findings and legal conclusions in *Common Cause v. Lewis*, 18-CVS-014001 (N.C. Sup. Ct. Sept. 3, 2019).

141. Irrespective of the U.S. Constitution, the 2016 Plan violates Article I, § 14 of the North Carolina Constitution by “burden[ing] protected expression based on viewpoint by making

Democratic votes less effective.” *Common Cause*, 18-CVS-014001, slip. op. at 322. “Legislative Defendants identified certain preferred speakers (Republican voters), while targeting certain disfavored speakers (Plaintiffs and other Democratic voters) for disfavored treatment” because of disagreement with the views they express when they vote. *Id.* (alteration and internal quotation marks omitted). Just as they did in creating the 2017 state legislative plans, “Legislative Defendants analyzed the voting histories of every VTD in North Carolina, identified VTDs that favor Democratic candidates, and then singled out the voters in those VTDs for disfavored treatment by packing and cracking them into districts with the aim of diluting their votes and, in the case of cracked districts, ensuring that these voters are significantly less likely, in comparison to Republican voters, to be able to elect a candidate who shares their views.” *Id.* at 323. “The fact that Democratic voters can still cast ballots under gerrymandered maps changes nothing. The government unconstitutionally burdens speech where it renders disfavored speech *less effective*, even if it does not ban such speech outright.” *Id.* at 323.

RESPONSE: State Defendants admit these allegations to the extent that they state the factual findings and legal conclusions in *Common Cause v. Lewis*, 18-CVS-014001 (N.C. Sup. Ct. Sept. 3, 2019). State Defendants admit, however, that it appears that applying the decision in *Common Cause* to the facts presented in *Rucho* suggests that the 2016 Plan likely violates Article I, § 14 of the North Carolina Constitution.

142. Irrespective of the U.S. Constitution, the 2016 Plan independently violates Article I, § 12 because it “severely burden[s]—if not outright preclude[s]” the ability of Democratic voters to associate by eroding their ability to “instruct” and “obtain redress” from their members of Congress on issues important to them. *Id.* at 326-27.

RESPONSE: This paragraph states an unresolved legal conclusion regarding whether

the “instruct” and “redress” provisions of Article I, § 12 apply to congressional redistricting. State Defendants therefore deny these allegations.

143. Irrespective of the U.S. Constitution, the 2016 Plan independently violates Article 1, Sections 12 and 14 of the North Carolina Constitution by retaliating against Plaintiffs and other Democratic voters based on their exercise of political speech. The 2016 Plan takes adverse action against Plaintiffs and other Democratic voters, retaliates against their protected speech and conduct, and would not have taken the adverse action but for Legislative Defendants’ retaliatory intent to pack and crack Democratic voters because of their prior political speech and associations.

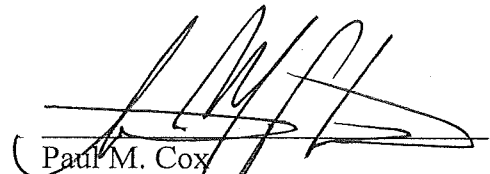
RESPONSE: State Defendants admit, that it appears that applying the decision in *Common Cause* to the facts presented in *Rucho* suggests that the 2016 Plan likely violates Article 1, Section 14 of the North Carolina Constitution.

144. There is no legitimate state interest in discriminating and retaliating against Plaintiffs because of their political viewpoints, voting histories, and affiliations. Nor can the 2016 Plan be explained or justified by North Carolina’s geography or any legitimate redistricting criteria.

RESPONSE: State Defendants admit that it appears that applying the decision in *Common Cause* to the facts presented in *Rucho*, including on the question of the State’s justifications, suggests that the 2016 Plan likely violates Article 1, Section 14 of the North Carolina Constitution.

This the 7th day of November, 2019.

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CERTIFICATE OF SERVICE

This is to certify that the undersigned has this day served the foregoing ANSWER in the above-titled action upon all parties to this cause by depositing a copy in the United States Mail, postage prepaid to:

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This the 7th day of November, 2019.


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